

**SEVENTY-FIRST DAY**  
(Thursday, May 16, 1985)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

A quorum was announced present.

Senator Craig Washington offered the invocation as follows:

God, do You believe us?

How can we truly love You when we don't love ourselves or each other?

We don't love each other because we see imperfections in each other.

We don't love ourselves because we know of the imperfections in us.

Yet, we say we love You. I suppose we would say we love You because You are perfect.

Is it rational that we do not love each other because we are different?

How can we, imperfect beings, then, love You because You are perfect, when that very fact makes You different?

Do You believe us?

Did You not say, "Love ye one another, as I have loved you"?

Do you believe us?

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

**SENATE BILLS AND RESOLUTIONS ON FIRST READING**

On motion of Senator Caperton and by unanimous consent, the following bills and resolutions were introduced, read first time and referred to the Committee indicated:

**S.C.R. 168** by Caperton Administration  
Granting 4-H legislative seminar permission to use Senate and House chambers on July 16 and 17, 1986.

**S.C.R. 169** by Barrientos Education  
Encouraging Central Education Agency to study educational needs of high-functioning students with autism.

**S.B. 1482** by Brown Jurisprudence  
Relating to venue for trial of unauthorized use of vehicle offenses; adding Article 13.23 to Chapter 13, Code of Criminal Procedure, 1965, as amended; and declaring an emergency.

**S.B. 1483** by Brown Intergovernmental Relations  
Relating to municipal employee pension systems in cities of 1,500,000 or more; correcting certain drafting errors in Sections 3(a) and 3(b) of the Act; increasing the size of the Board; providing an adjustment for the cost-of-living; providing for benefits to the widows of certain categories of vested employees who die before reaching the age of pension entitlement; limiting the age at which a dependent child

receives benefits; authorizing the withdrawal of certain employees from the fund; and declaring an emergency.

**S.B. 1484** by Sharp

Intergovernmental Relations

Relating to the dissolution of the Refugio County Memorial Hospital District.

**S.B. 1485** by Sharp

Intergovernmental Relations

Relating to limitations on certain municipal annexations.

**S.B. 1486** by Santiesteban

Intergovernmental Relations

Relating to the composition of the board of metropolitan rapid transit authorities in certain counties.

**S.B. 1487** by Harris

Intergovernmental Relations

Relating to the power of cities and towns, having a population of not less than 70,000 nor more than 90,000, located wholly or partially within a county with a population greater than one million, and completely surrounding and contiguous to a general law city or town having a population of less than 600, to annex such general law city or town.

### HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

**H.J.R. 54**, To Committee on Intergovernmental Relations.

**H.J.R. 72**, To Committee on Finance.

**H.J.R. 83**, To Committee on Criminal Justice.

**H.B. 256**, To Committee on Jurisprudence.

**H.B. 435**, To Committee on Education.

**H.B. 797**, To Committee on State Affairs.

**H.B. 894**, To Committee on Intergovernmental Relations.

**H.B. 1551**, To Committee on Jurisprudence.

**H.B. 1955**, To Committee on Intergovernmental Relations.

**H.B. 2005**, To Committee on Health and Human Resources.

### SENATE RESOLUTION 408

Senator Edwards offered the following resolution:

WHEREAS, It is a privilege and an honor for the Senate of the State of Texas to recognize United States Marshal Clinton Thomas Peoples for his 55 years of dedicated service to the people of Texas as head of the oldest federal law enforcement agency on the North American continent; and

WHEREAS, According to historians, Marshal Peoples holds more separate law enforcement titles than any other individual; reappointed as United States Marshal for a third term under President Ronald Reagan, he is the second United States Marshal in tenure and possibly holds the national tenure in law enforcement; and

WHEREAS, This remarkable gentleman is the second man in the history of the Texas Rangers to hold the title of Texas Ranger Senior Captain of all Rangers; other positions he has held include: Texas Ranger Captain, Texas Ranger Private, Highway Patrolman, Chief Deputy Sheriff, Special Texas Ranger, Chief Deputy Constable, and Deputy Sheriff; when he retired from the Texas Rangers he was the Senior Ranger in tenure and the Senior Captain in tenure; and

WHEREAS, Marshal Clint Peoples holds a prominent place in the annals of Texas history as one of the "good guys" of the Old West; this illustrious lawman and his horse, Chico, are depicted in wax in the Southwestern Historical Wax Museum in Grand Prairie, Texas; his life and brilliant career are recorded for posterity in his biography, Captain Clint Peoples—Texas Ranger, Fifty Years a Lawman; and

WHEREAS, Marshal Peoples has brought great distinction to himself and his state by his numerous achievements and has been justly recognized many times; Governor Dolph Briscoe bestowed upon him the top award in the state for development of tourism, the Texas Governor's Tourist Development Award, as well as the Ambassador of Good Will Award; he was selected for inclusion in Who's Who in Government; he was presented the Award for the Greatest Contribution to Law Enforcement in Central Texas by the National Society of the Sons of the American Revolution; the Longhorn Club erected a historical monument in Waco, Texas, in honor of Captain Peoples and two other Rangers; Marshal Peoples has been honored in several television broadcasts including "To Tell the Truth," "The Spirit of Texas," "Good Morning Central Texas," and "Deep in the Heart of Texas"; he has also been recognized as National Police Officer of the Month by Master Detective Magazine and honored in the Congressional Record and by resolution in the Texas House of Representatives; and

WHEREAS, This accomplished man has given unselfishly of his time and talents to various organizations; he has served as chairman of the Texas Ranger Commemorative Foundation and holds life memberships in the Texas Sheriffs Association, the International Chiefs of Police Association, the Headliners Club, and Masonic Lodge 748; a member of the Karem Shrine Temple and Columbus Avenue Baptist Church in Waco, he is past president of the Downtown Bible Class and the Texas Public Employees Association; and

WHEREAS, This federal marshal has contributed greatly to the State of Texas and will continue to be a magnificent representative of his profession, his community, and his state; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 69th Legislature, commend Marshal Clinton Peoples for his career of unparalleled service to the welfare of the citizens of Texas and congratulate him on his 55th year as a renowned law enforcement official; and, be it further

RESOLVED, That a copy of this Resolution be prepared under the seal of the Senate as an expression of the admiration of the Texas Senate with best wishes for many more years of success.

The resolution was read and was adopted.

On motion of Senator Montford and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

#### GUESTS PRESENTED

Senator Edwards escorted Marshal and Mrs. Peoples to the President's rostrum.

The President presented Marshal Peoples with an enrolled copy of S.R. 408.

#### SENATE BILL 675 WITH HOUSE AMENDMENTS

Senator Farabee called S.B. 675 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.  
Committee Amendment No. 1 - Uher

S.B. 675 is amended as follows:

In Section 61.062 on page 8 strike lines 12 through 16 starting with "(b)" on line 12 and ending with "board." on line 16.

Re-letter the following subsections of Section 61.062 accordingly.

## Committee Amendment No. 2 - Uher

Amend line 6, page 9 by striking [30] and substituting "130".

The amendments were read.

Senator Farabee moved to concur in the House amendments.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 1246 WITH HOUSE AMENDMENTS**

Senator Farabee called **S.B. 1246** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

## Committee Amendment No. 1 - Uher

Amend **S.B. 1246** as follows:

- (1) On page 1, line 5, strike "2b," and the comma after "8D".
- (2) On page 1, strike lines 14-23.
- (3) On page 4, strike lines 15-18.
- (4) On page 4, line 19, strike "(b)" and substitute "SECTION 5. (a)".
- (5) On page 4, line 23, strike "(c)" and substitute "(b)".

## Floor Amendment No. 1 - McWilliams

Amend **S.B. 1246** by renumbering Sections 3 through 7 as Sections 4 through 8, and adding a new Section 3 to read as follows:

SECTION 3. Section 18, Chapter 293, Acts of the 48th Legislature, 1943 (Article 4413a-22, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. Wherever the word "department", "board", "bureau", "institution", "commission", or other word or words of similar import appear in any prior Section of this Act, such shall mean each and every department, board, bureau, institution, commission or agency of the State Government, including river authorities.

The amendments were read.

Senator Farabee moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1246** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Farabee, Chairman; Jones, Traeger, McFarland, Edwards.

**SENATE BILL 1282 WITH HOUSE AMENDMENTS**

Senator Parker called **S.B. 1282** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Rangel

Substitute the following for S.B. 1282:

**A BILL TO BE ENTITLED  
AN ACT**

relating to the issuance of bonds by certain cities to pay current expenses; providing for the levy of a tax to pay the principal of and interest thereon; containing other provisions pertaining to the subject; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

**SECTION 1. BONDS.** (a) Except as provided by Section 4 of this Act, the governing body of an incorporated city that has suffered or is likely to suffer a loss during a fiscal year of the type specified by Subsection (b) of this section may provide for the payment of its current expenses for such fiscal year, or a portion of such fiscal year, by the issuance of bonds secured by and payable from ad valorem taxes.

(b) This section applies to a city that has lost or is likely to lose, because an entity which has received city funds has sought or acceded to protection under title 11 of the United States Code entitled "Bankruptcy", an amount that is:

(1) greater than \$15 million; and  
(2) greater than 15 percent of the city's budget for the fiscal year involved, excluding the amount necessary for debt service.

(c) A determination by the governing body of the city that a loss covered by this section has occurred or that it is likely that such a loss will occur, or of the amount of a loss or anticipated loss, is conclusive.

(d) no action by a city under the authority of this Act shall affect or abrogate any claims the city may have with respect to the loss nor shall issuance of Bonds pursuant to this Act constitute a waiver of any claims or estop the city from recovering their own, or constitute a ratification of any prior action by city in connection with such loss, and the city may in its action authorizing the Bonds, reserve all such claims.

**SECTION 2. ISSUANCE AND TERMS.** Bonds under this Act may be issued without an election, may mature serially or otherwise, not later than five years after their issuance date, may bear interest at any rate or rates permitted by law, and may be sold at public or private sale for any price or prices, all as determined by the governing body in the ordinance authorizing the issuance and sale of the bonds.

**SECTION 3. TAXES.** The governing body may levy and pledge, and cause to be assessed and collected, annual ad valorem taxes sufficient to pay the principal of and interest on the bonds as they come due.

**SECTION 4. PROHIBITION.** A city may not issue bonds under this Act in a principal amount in excess of loss sustained or anticipated by the city and the cost of issuing the bonds or to the extent that the aggregate principal amount of tax bond indebtedness of the city outstanding after the issuance would exceed 10 percent of the assessed valuation of taxable property in the city according to most recent ad valorem tax rolls of the city.

**SECTION 5. APPROVAL AND REGISTRATION.** The city shall submit bonds issued under this Act and the proceedings authorizing the bonds to the attorney general for review before their delivery to the purchasers. If the attorney general finds that the bonds have been authorized in accordance with this Act, the attorney general shall approve them and deliver them to the comptroller of public accounts who shall register them. After approval and registration, the bonds are incontestable for any cause.

**SECTION 6. NEGOTIABLE INSTRUMENTS; INVESTMENT SECURITIES.** Bonds issued under this Act are negotiable instruments and investment securities governed by Chapter 8, Business & Commerce Code.

**SECTION 7. AUTHORIZED INVESTMENT; SECURITY FOR PUBLIC FUNDS.** Bonds issued under this Act are legal and authorized investments for banks, trust companies, savings and loan associations, and insurance companies and may secure the deposit of public funds of the state or of cities, towns, villages, counties, school districts, or other political subdivisions of the state. The bonds may provide this security to the extent of their principal amount.

**SECTION 8. CUMULATIVE PROVISION.** This Act is cumulative of all existing laws of the State of Texas that are applicable, but this Act is wholly sufficient authority within itself for the actions authorized herein, notwithstanding the provisions of any general or special law or charter to the contrary, and when any action is taken under this Act, to the extent that such existing laws or charter provisions may be in conflict with the provisions of this Act, the provisions of this Act shall govern and prevail.

**SECTION 9. LIBERAL CONSTRUCTION.** This Act shall be construed liberally to effectuate the legislative intent and purposes of this Act, and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers.

**SECTION 10. SEVERABILITY.** In case any one or more of the sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act or the applications of sections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

**SECTION 11. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1 - Leonard

Amend **C.S.S.B. 1282** by renumbering Sections 8-11 as Sections 9-12 and adding a new Section 8 to read as follows:

**SECTION 8. REDEMPTION.** On recovery of a loss covered by this Act or failure of an anticipated loss covered by this Act to occur, the governing body shall promptly redeem bonds issued to cover the loss or anticipated loss in a principal amount equal to the amount recovered or the amount of anticipated loss not occurring.

The amendments were read.

Senator Parker moved to concur in the House amendments.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 1272 WITH HOUSE AMENDMENTS**

Senator Henderson called **S.B. 1272** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.  
Committee Amendment No. 1 - Craddick

Amend **S.B. 1272** by inserting the following language on page 8 at line 12 after "facilities.":

“Prior to issuing bonds, or other obligations, a confirmation election must be held in accordance with Sections 54.026-54.029 Water Code and a majority of voters must approve the establishment of the district.”

Floor Amendment No. 1 - Pennington

Amend S.B. 1272 by deleting the word “sewer” on page 5, line 8.

Floor Amendment No. 2 - Pennington

Amend S.B. 1272 by deleting the numeral “54.154” and inserting in its place “54.153” on page 11, line 9.

The amendments were read.

Senator Henderson moved to concur in the House amendments.

The motion prevailed.

### SENATE BILL 655 WITH HOUSE AMENDMENT

Senator Brooks called S.B. 655 from the President’s table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 - Berlanga

Amend S.B. 655 as follows:

- (1) On page 1, line 13, strike “or that” and substitute “and that”.
- (2) On page 2, strike Subsection (b) and reletter subsequent subsections accordingly.
- (3) On page 2, lines 14 and 15, strike “or any category of that membership”.
- (4) On page 2, line 15, insert “solely” immediately before “on”.
- (5) On page 2, line 21, insert “and privileges” immediately after “membership”.
- (6) On page 2, lines 23 and 24, insert “or privileges” immediately after “membership”.
- (7) On page 3, line 3, insert “or privileges” immediately after “membership”.
- (8) On page 3, line 6, strike “Section 18” and insert “Sections 18 and 18A”.
- (9) On page 3, line 10, insert “or podiatric” between “medical” and “acts”.
- (10) On page 3, line 11, insert “respective” between “the” and “license”.
- (11) On page 3, lines 13, 18, and 24, strike “requiring” and substitute “providing”.
- (12) On page 4, line 4, insert “or any categories thereof” immediately after “appointments”.
- (13) On page 4, lines 7 and 8, strike “or permitted to participate in educational programs”.
- (14) On page 4, strike lines 11-14 and substitute “are in compliance with the provisions of this Act.”.
- (15) On page 4, between lines 14 and 15, insert the following:

Sec. 18A. The governing board of a hospital may not force any member of the medical staff to involuntarily coadmit patients with a podiatrist licensed by the

State Board of Podiatry Examiners, to involuntarily be responsible for the care of any medical problem or condition of a podiatric patient, or to involuntarily determine the risk and effect of any proposed podiatric procedure on the total health status of the patient.

The amendment was read.

Senator Brooks moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 807 WITH HOUSE AMENDMENTS**

Senator Traeger called **S.B. 807** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### **Amendment No. 1 - Eckels**

Add a new SECTION 10, renumbering the other sections accordingly, to read as follows:

SECTION 10. Amend Section 3.211, Art. 6702-1, VTCS, in the following manner:

"Section 3.211. COMPETITIVE BIDDING. All equipment, materials, and supplies for the construction and maintenance of county roads and for the county road department shall be purchased by the commissioners court on competitive bids in conformity with estimates and specifications prepared by the county road engineer. However, on recommendation of the county road engineer and when in the judgment of the commissioners court it is considered in the best interest of the county, purchases in an amount not to exceed \$5,000 [~~\$1,000~~] may be made through negotiation by the commissioners court or the commissioners court's authorized representative on requisition to be approved by the commissioners court or the county auditor without advertising for competitive bids. Before any claim covering the purchase of the equipment, materials, and supplies and for any services contracted for by the commissioners court may be ordered paid by the commissioners court, the county road engineer must certify in writing the correctness of the claim and must certify that the respective equipment, materials, and supplies covered by the claim conform to specifications approved by him, that the equipment, materials, and supplies were delivered in good condition, and that any road department services contracted for by the commissioners court have been satisfactorily performed. This section does not permit the division or reduction of purchases for the purpose of avoiding the requirement of taking formal bids on purchases that would otherwise exceed \$5,000 [~~\$1,000~~]."

#### **Amendment No. 2 - Eckels**

Amend SECTION 1, Section 5, page 4, line 15, in the following manner:

"of publication at least 14 days before the date of the bid opening."

#### **Amendment No. 3 - Eckels**

Amend SECTION 1, Section 6, page 5, line 9, by adding at the end of the sentence the following:

"in the notice. The date specified in the notice may be extended by the commissioners court if an error is discovered in the original specifications or the nature of the item to be purchased requires an extension in order for the county to best utilize the provisions of SECTION 1, Section 10 of this Act."



**Amendment No. 4 - Eckels**

Amend SECTION 1, Section 12, line 11, page 8, as follows:

“shall furnish a performance bond to the county, if required by the county, for the full amount.”

**Amendment No. 5 - Eckels**

Amend Section 12, page 25, line 17, by changing the effective date from January 1, 1986, to September 1, 1985.

**Amendment No. 6 - Eckels**

Amend SECTION 1, Section 14, page 8-9, by striking the existing language and substituting therefor the following:

“Section 14. CRIMINAL PENALTY. A county officer or employee who knowingly or intentionally violates this Act commits an offense. The offense is a Class C Misdemeanor.”

**Amendment No. 7 - Eckels**

Amend SECTION 1, Section 10, page 7, lines 4-5 as follows:

“However, all proposals that have been submitted shall be open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.”

**Amendment No. 8 - Eckels**

Amend section 11(b) of SECTION 1 on page 7, lines 6-7 as follows:

“percent. The original contract price may not be decreased by [25] 18 percent or more without the consent of the contractor.”

**Amendment No. 9 - Eckels**

Amend S.B. 807 by adding a new Section 11 to the bill to read as follows and by renumbering the existing Section 11 and subsequent sections appropriately:

SECTION 11. The amendment by this Act of Section 2, Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes), is contingent on S.B. 802, Acts of the 69th Legislature, Regular Session, 1985, not becoming law. If S.B. 802 does become law, the amendment by this Act of Section 2, Bond and Warrant Law of 1931, has no effect.

The amendments were read.

Senator Traeger moved to concur in the House amendments.

The motion prevailed.

**SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

The President announced the time had arrived to consider the Executive appointments to agencies, boards and commissions. Notice of submission of these names for consideration was given yesterday by Senator Howard.

Senator Howard moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

**NOMINEES CONFIRMED**

The following nominees as reported by the Committee on Nominations were confirmed by the following vote: Yeas 31, Nays 0.

Members, Texas Economic Development Commission: CLYDE H. ALEXANDER II, Henderson County; WILLIAM H. CROOK, Hays County; BOB L. HERCHERT, Tarrant County; GEORGE McLAUGHLIN, Jefferson County; HUGH G. ROBINSON, Dallas County; JOE E. RUSSO, Harris County.

Members, Texas Woman's University Board of Regents: JUNE PAGE JOHNSON, Travis County; MARY BETH SCULL, Lubbock County; LAVONNE DALBY UNSELL, Denton County; RICHARD WHITE, JR., Harris County.

Members, Board of Directors, State Bar of Texas: (Appointed by Supreme Court of Texas) PHIL JENKINS, Anderson County; FRANK SEPULVEDA, Bexar County.

Branch Pilot for the Houston Ship Channel and Galveston Bar: CAPTAIN ROBERT M. BRATCHER, Harris County.

Members, Board of Directors, Brazos River Authority: JAMES JEFFERSON GIBSON, King County; DON T. KEARBY, Palo Pinto County; JAMES H. MILLS, Williamson County; CHARLES MOSER, Washington County; SYDNEY E. NIBLO, Taylor County; LYNDON OLSON, SR., McLennan County; JOHN M. WEHBY, Williamson County.

Member, Employees Retirement System of Texas: (Appointed by Speaker Lewis) B. L. PARKER, Travis County.

Member, Finance Commission of Texas: RICHARD H. SKINNER, Harris County.

Members, Texas Guaranteed Student Loan Corporation: GEORGE M. CREWS, Tarrant County; DR. LAWRENCE K. PETTIT, Kleberg County; GEORGE VERDUZCO, Webb County.

Member, Good Neighbor Commission: TRAVIS JOHNSON, El Paso County.

Member, Gulf Coast Waste Disposal Authority: JOHN UNBEHAGEN, Galveston County.

Member, Commission on Jail Standards: JOHNNY KLEVENHAGEN, Harris County.

Member, Texas Juvenile Probation Commission: JUDGE SCOTT D. MOORE, Tarrant County.

Members, Texas Optometry Board: DR. GENE B. BLACKWELL, Childress County; DR. STANLEY C. PEARLE, Dallas County; DR. WILLIAM D. (BILL) PITTMAN, Limestone County.

Commissioner, Pecos River Compact: BILLY L. MOODY, Pecos County.

Member, Advisory Committee, State Preservation Board: HARRY A. GOLEMON, Harris County.

Members, Texas Board of Private Investigators and Private Security Agencies: ROBERT D. SANDERS, Dallas County; JOHN WAYNE SNELSON, Harris County.

Members, Radiation Advisory Board: PHILIP C. JOHNSON, M.D., Harris County; DOUGLAS BELKNAP OWEN, Dallas County; GEORGE RIDDLE, Harris County.

Members, Texas Real Estate Commission: BILLIE HEFFNER, Tarrant County; MICHAEL N. WIELAND, El Paso County.

Member, Texas Surplus Property Agency: CHARLES LOWELL SLATON, Lubbock County.

Judge, 320th Judicial District: DON REXFORD EMERSON, Potter County.

Associate Justice, 12th Court of Appeals: JAMES WILLIAM BASS, JR., Van Zandt County.

Presiding Judge, 5th Administrative Judicial District: JUDGE JOE B. EVINS, Hidalgo County.

Members, Advisory Council, Technical-Vocational Education: GARY O. BOREN, Lubbock County; HANK BROWN, Bexar County; SHIRLENE COOK, Jefferson County; JOHN COX, Harris County; JIM HUTCHINS, Hall County; JANE SARAH LACK, Victoria County; FILOMENA LEO, Hidalgo County; TED MARTINEZ, PH.D., Dallas County; GEORGE F. MATOTT, Williamson County; DONNA PRICE, Harris County; TALMADGE D. STEINKE, McLennan County; WILLIAM E. ZINSMEYER, Bexar County.

(Senator Brooks in Chair)

#### HOUSE BILL 1449 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1449**, Relating to a supplemental appropriation to the Texas Department of Corrections for security salaries.

The bill was read second time and was passed to third reading.

#### HOUSE BILL 1449 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1449** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### COMMITTEE SUBSTITUTE SENATE BILL 1123 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1123**, Relating to savings and loan associations; providing penalties.

The bill was read second time and was passed to engrossment.

**COMMITTEE SUBSTITUTE SENATE BILL 1123 ON THIRD READING**

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 1123 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 1819 ON SECOND READING**

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1819**, Relating to the regulation of alcoholic beverages.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1819** by striking all below the enacting clause and substituting the following:

**SECTION 1.** Section 61.71(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) made a false statement or a misrepresentation in his original application or a renewal application;

(5) knowingly sold, served, or delivered beer to a person under 19 years of age;

(6) sold, served, or delivered beer to an intoxicated [a] person [~~showing evidence of intoxication~~];

(7) sold, served, or delivered beer at a time when its sale is prohibited;

(8) entered or offered to enter an agreement, condition, or system which would constitute the sale or possession of alcoholic beverages on consignment;

(9) possessed on the licensed premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises, or permitted an agent, servant, or employee to do so, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(10) does not have at his licensed premises running water, if it is available, and separate toilets for both sexes which are properly identified;

(11) permitted a person on the licensed premises to engage in conduct which is lewd, immoral, or offensive to public decency;

(12) employed a person under 18 years of age to sell, handle, or dispense beer, or to assist in doing so, in an establishment where beer is sold for on-premises consumption;

(13) conspired with a person to violate Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or 108.04-108.06 of this code, or a rule promulgated under Section 5.40 of this code, or accepted a benefit from an act prohibited by any of these sections or rules;

(14) refused to permit or interfered with an inspection of the licensed premises by an authorized representative of the commission or a peace officer;

(15) permitted the use or display of his license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license;

(16) maintained blinds or barriers at his place of business in violation of this code;

(17) conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

(18) consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by this code;

(19) purchased beer for the purpose of resale from a person other than the holder of a manufacturer's or distributor's license;

(20) acquired an alcoholic beverage for the purpose of resale from another retail dealer of alcoholic beverages;

(21) owned an interest of any kind in the business or premises of the holder of a distributor's license;

(22) purchased, sold, offered for sale, distributed, or delivered an alcoholic beverage, or consumed an alcoholic beverage or permitted one to be consumed on the licensed premises while his license was under suspension;

(23) purchased, possessed, stored, sold, or offered for sale beer in or from an original package bearing a brand or trade name of a manufacturer other than the brand or trade name shown on the container;

(24) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(25) imported beer into this state except as authorized by Section 107.07 of this code;

(26) occupied premises in which the holder of a manufacturer's or distributor's license had an interest of any kind;

(27) knowingly permitted a person who had an interest in a permit or license which was cancelled for cause to sell, handle, or assist in selling or handling alcoholic beverages on the licensed premises within one year after the cancellation;

(28) was financially interested in a place of business engaged in the selling of distilled spirits or permitted a person having an interest in that type of business to have a financial interest in the business authorized by his license, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(29) is residentially domiciled with or related to a person engaged in selling distilled spirits, except as permitted by Section 22.06, 24.05, or 102.05 of this code, so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code; or

(30) is residentially domiciled with or related to a person whose license has been cancelled within the preceding 12 months so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code.

SECTION 2. The purpose of Sections 2-14 of this Act is to avoid the imposition of sanctions against the state and loss of federal highway funds pursuant to certain of the provisions of Public Law 98-363 passed by the 98th Congress, 2d Session (1984), and as set out in 23 United States Code Section 158 by raising the minimum age for the purchase and public possession of liquor and beer.

SECTION 3. Section 11.46(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

(1) the applicant has been convicted in a court of competent jurisdiction of the violation of any provision of this code during the two years immediately preceding the filing of his application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony;

(3) within the six-month period immediately preceding his application the applicant violated or caused to be violated a provision of this code or a rule or regulation of the commission which involves moral turpitude, as distinguished from a technical violation of this code or of the rule;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for any taxes, fees, or payment of penalty imposed by this code or by rule of the commission;

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

(7) the applicant is a minor [~~less than 19 years of age~~];

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(9) the applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated;

(10) the applicant will sell liquor unlawfully in a dry area or in a manner contrary to law or will knowingly permit an agent, servant, or employee to do so;

(11) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued a permit or renewal permit on or before September 1, 1948, and has at some time been a United States citizen;

(12) the applicant does not have an adequate building available at the address for which the permit is sought;

(13) the applicant is residentially domiciled with a person whose permit or license has been cancelled for cause within the 12 months immediately preceding the date of his present application;

(14) the applicant has failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises for which the permit is sought are located; or

(15) during the six months immediately preceding the filing of the application the premises for which the permit is sought have been operated, used, or frequented for a purpose or in a manner that is lewd, immoral, or offensive to public decency.

SECTION 4. Section 39.31, Alcoholic Beverage Code, is amended to read as follows:

Sec. 39.31. SALES TO MINORS. No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor to a minor [~~person under~~

~~19 years of age~~] unless that minor presents with his prescription the written consent of his parent or guardian. The person making the sale shall file the written consent with the prescription.

SECTION 5. Section 40.05, Alcoholic Beverage Code, is amended to read as follows:

Sec. 40.05. PROHIBITED ACTIVITIES. No physician may:

- (1) prescribe liquor for any purpose unless he holds a physician's permit;
- (2) prescribe liquor for other than medicinal purposes;
- (3) issue prescriptions for liquor to any person without first making a physical examination of the patient to determine the disease or ailment afflicting him;
- (4) issue a prescription which does not contain all the information required by this chapter written in the English language;
- (5) accept any sort of compensation or guarantee as to income or material benefit from a holder of a medicinal permit for writing a prescription;
- (6) prescribe more than one pint of liquor for a person in any one day;
- (7) prescribe liquor for any person showing evidence of intoxication;
- (8) prescribe liquor for any person under any name other than the true name of the person for whom the liquor is intended;
- (9) prescribe liquor for any minor ~~[person under the age of 19 years]~~ unless he has the written consent of the minor's ~~[person's]~~ parent or guardian;
- (10) issue more than 100 prescriptions for liquor in any period of 90 days, beginning from the date designated by the physician in any order for prescription forms placed with the commission;
- (11) fail or refuse to make and keep for a period of two years any record of prescriptions issued for liquor as required by the commission;
- (12) fail to make reports required by the commission; or
- (13) fail to divulge information or produce records of the issuance of prescriptions when requested to do so by a representative of the commission or by any peace officer or any county or district attorney.

SECTION 6. Section 61.42(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The county judge shall refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

- (1) the applicant is a minor ~~[under 19 years of age]~~;
- (2) the applicant is indebted to the state for any taxes, fees, or penalties imposed by this code or by rule of the commission;
- (3) the place or manner in which the applicant for a retail dealer's license may conduct his business warrants a refusal of a license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;
- (4) the applicant is in the habit of using alcoholic beverages to excess or is mentally or physically incompetent;
- (5) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued an original or renewal license on or before September 1, 1948;
- (6) the applicant was finally convicted of a felony during the two years immediately preceding the filing of his application;
- (7) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad; or
- (8) as to a corporation, it is not incorporated under the laws of this state, or at least 51 percent of the corporate stock is not owned at all times by persons

who individually are qualified to obtain a license, except that this subdivision does not apply to a holder of any renewal of a distributor's license which was in effect on January 1, 1953, or to an applicant for a beer retailer's on-premise license for a railway car.

SECTION 7. Section 61.71(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) made a false statement or a misrepresentation in his original application or a renewal application;

(5) knowingly sold, served, or delivered beer to a minor [~~person under 19 years of age~~];

(6) sold, served, or delivered beer to a person showing evidence of intoxication;

(7) sold, served, or delivered beer at a time when its sale is prohibited;

(8) entered or offered to enter an agreement, condition, or system which would constitute the sale or possession of alcoholic beverages on consignment;

(9) possessed on the licensed premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises, or permitted an agent, servant, or employee to do so, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(10) does not have at his licensed premises running water, if it is available, and separate toilets for both sexes which are properly identified;

(11) permitted a person on the licensed premises to engage in conduct which is lewd, immoral, or offensive to public decency;

(12) employed a person under 18 years of age to sell, handle, or dispense beer, or to assist in doing so, in an establishment where beer is sold for on-premises consumption;

(13) conspired with a person to violate Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or 108.04-108.06 of this code, or a rule promulgated under Section 5.40 of this code, or accepted a benefit from an act prohibited by any of these sections or rules;

(14) refused to permit or interfered with an inspection of the licensed premises by an authorized representative of the commission or a peace officer;

(15) permitted the use or display of his license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license;

(16) maintained blinds or barriers at his place of business in violation of this code;

(17) conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

(18) consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by this code;



(19) purchased beer for the purpose of resale from a person other than the holder of a manufacturer's or distributor's license;

(20) acquired an alcoholic beverage for the purpose of resale from another retail dealer of alcoholic beverages;

(21) owned an interest of any kind in the business or premises of the holder of a distributor's license;

(22) purchased, sold, offered for sale, distributed, or delivered an alcoholic beverage, or consumed an alcoholic beverage or permitted one to be consumed on the licensed premises while his license was under suspension;

(23) purchased, possessed, stored, sold, or offered for sale beer in or from an original package bearing a brand or trade name of a manufacturer other than the brand or trade name shown on the container;

(24) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(25) imported beer into this state except as authorized by Section 107.07 of this code;

(26) occupied premises in which the holder of a manufacturer's or distributor's license had an interest of any kind;

(27) knowingly permitted a person who had an interest in a permit or license which was cancelled for cause to sell, handle, or assist in selling or handling alcoholic beverages on the licensed premises within one year after the cancellation;

(28) was financially interested in a place of business engaged in the selling of distilled spirits or permitted a person having an interest in that type of business to have a financial interest in the business authorized by his license, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(29) is residually domiciled with or related to a person engaged in selling distilled spirits, except as permitted by Section 22.06, 24.05, or 102.05 of this code, so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code; or

(30) is residually domiciled with or related to a person whose license has been cancelled within the preceding 12 months so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code.

SECTION 8. Section 61.74(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal general, local, or branch distributor's license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) violated Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or 108.04-108.06 of this code, or a rule or regulation promulgated under Section 5.40 of this code;

(5) failed to comply with a requirement of the commission relating to the keeping of records or making of reports;

(6) failed to pay any tax due the state on any beer he sold, stored, or transported;

(7) refused to permit or interfered with an inspection of his licensed premises, vehicles, books, or records by an authorized representative of the commission;

(8) consummated a sale of beer outside the county or counties in which he was authorized to sell beer by his license;

(9) purchased, sold, offered for sale, distributed, or delivered beer while his license was under suspension;

(10) permitted the use of his license in the operation of a business conducted for the benefit of a person not authorized by law to have an interest in the business;

(11) made a false or misleading representation or statement in his original application or a renewal application;

(12) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(13) misrepresented any beer sold by him to a retailer or to the public;

(14) knowingly sold or delivered beer to a minor [~~person under 19 years of age~~]; or

(15) purchased, possessed, stored, sold, or offered for sale beer in an original package bearing a brand or trade name of a manufacturer other than the brand or trade name of the manufacturer shown on the container.

SECTION 9. Section 106.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.01. DEFINITION. In this code, "minor" means a person under 21 [~~19~~] years of age.

SECTION 10. Section 106.03(b), Alcoholic Beverage Code, is amended to read as follows:

(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 21 [~~19~~] years old or older by displaying an apparently valid Texas driver's license or an identification card issued by the Texas Department of Public Safety, containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage.

SECTION 11. Section 106.07(a), Alcoholic Beverage Code, is amended to read as follows:

(a) A minor commits an offense if he falsely states that he is 21 [~~19~~] years of age or older or presents any document that indicates he is 21 [~~19~~] years of age or older to a person engaged in selling or serving alcoholic beverages.

SECTION 12. Section 106.12(a), Alcoholic Beverage Code, is amended to read as follows:

(a) Any person convicted of not more than one violation of this code while a minor, on attaining the age of 21 [~~19~~] years, may apply to the court in which he was convicted to have the conviction expunged.

SECTION 13. Section 107.07(a), Alcoholic Beverage Code, is amended to read as follows:

(a) A Texas resident may import not more than one quart of liquor for his own personal use without being required to hold a permit. A Texas resident may import for his own personal use not more than three gallons of wine without being required to hold a permit. A nonresident of Texas may import not more than a gallon of liquor for his own personal use without being required to hold a permit. A person importing liquor into the state under this subsection must pay the state tax on liquor and affix the required tax stamps. No minor [~~person under the age of 19 years~~] and no intoxicated person may import any liquor into the state. A person importing wine or liquor under this subsection must personally accompany the wine or liquor as it enters the state. A person may not avail himself of the exemptions set forth in this subsection more than once every thirty days.

SECTION 14. Section 109.53, Alcoholic Beverage Code, is amended to read as follows:

Sec. 109.53. CITIZENSHIP OF PERMITTEE; CONTROL OF PREMISES; SUBTERFUGE OWNERSHIP; ETC. No person who has not been a citizen of Texas for a period of three years immediately preceding the filing of his application therefor shall be eligible to receive a permit under this code. No permit except a brewer's permit, and such other licenses and permits as are necessary to the operation of a brewer's permit, shall be issued to a corporation unless the same be incorporated under the laws of the state and unless at least 51 percent of the stock of the corporation is owned at all times by citizens who have resided within the state for a period of three years and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic or foreign corporations that were engaged in the legal alcoholic beverage business in this state under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this code which shall violate any provisions hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the attorney general, when any such violation is called to his attention, to file a suit for such cancellation in a district court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent's, industrial, medicinal and carrier's permits. No person shall sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices. No applicant for a package store permit or a renewal thereof shall have authority to designate as "premise" and the commission or administrator shall not approve a lesser area than that specifically defined as "premise" in Section 11.49(a) of this code. Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful. No minor [~~person under the age of 19 years~~], unless accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, shall knowingly be allowed on the premises of the holder of a package store permit. The prohibition against the presence of a minor [~~person under the age of 19 years~~] on the premises of the holder of a package store permit does not apply to the presence on the premises of the holder or a person lawfully employed by the holder. Any package store permittee who shall be injured in his business or property by another package store permittee by reason of anything prohibited in this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and/or to recover threefold the damages by him sustained; plus costs of suit including a reasonable attorney's fee. The provision prohibiting the licensing of only a portion of a building as premise for a package store permit shall not apply to hotels as already defined in this code.

SECTION 15. The changes in the minimum age made by Sections 3-14 of this Act do not affect the eligibility of a person who holds a license or permit on the

effective date of Sections 3-14 of this Act to continue to hold and renew the license or permit and to continue to engage in the activities authorized by the license or permit.

SECTION 16. (a) If the attorney general finds that Public Law 98-363 as it relates to the imposition of sanctions against a state involving federal highway funds for failing to increase the age at which persons may purchase or consume alcoholic beverages is repealed, has expired, is suspended, or the enforcement of it has for any reason been enjoined, or if the attorney general finds that a United States court of appeals or the United States Supreme Court has entered a final order holding that the federal law, to the extent it has the described effect, or a rule implementing it is unconstitutional or otherwise invalid, in whole or in part, or if the attorney general finds that another Act of Congress has the effect of abrogating the sanctions imposed by Public Law 98-363, the attorney general shall file a certificate of that fact with the secretary of state. The secretary shall publish the certificate in the Texas Register.

(b) Sections 3-14 of this Act take effect September 1, 1986, except that if before that date the attorney general has filed with the secretary of state a certificate finding the existence of one of the facts specified in Subsection (a) of this section, the effective date of Sections 3-14 of this Act is delayed until the 30th day after the date on which the attorney general files another certificate with the secretary of state stating that none of the facts specified in Subsection (a) of this section exists. The secretary shall publish the certificate in the Texas Register.

(c) If, after Sections 3-14 of this Act have taken effect, the attorney general files with the secretary of state a certificate finding that one of the facts specified in Subsection (a) of this section exists, then effective on the date specified in Subsection (d) of this section the following sections of the Alcoholic Beverage Code are amended as follows:

(1) Section 106.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.01. DEFINITION. In this code, "minor" means a person under 19 years of age.

(2) Section 106.03(b), Alcoholic Beverage Code, is amended to read as follows:

(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 19 years old or older by displaying an apparently valid Texas driver's license or an identification card issued by the Texas Department of Public Safety, containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage.

(3) Section 106.07(a), Alcoholic Beverage Code, is amended to read as follows:

(a) A minor commits an offense if he falsely states that he is 19 years of age or older or presents any document that indicates he is 19 years of age or older to a person engaged in selling or serving alcoholic beverages.

(4) Section 106.12(a), Alcoholic Beverage Code, is amended to read as follows:

(a) Any person convicted of not more than one violation of this code while a minor, on attaining the age of 19 years, may apply to the court in which he was convicted to have the conviction expunged.

(d) The contingency described in Subsection (c) of this section takes effect as follows:

(1) if the certificate is filed at a time when the legislature is not convened in regular session, the effective date is June 15 immediately after the next regular session of the legislature; and

(2) if the certificate is filed while the legislature is convened in regular session, the effective date is June 15 immediately after final adjournment of that regular session.

SECTION 17. Section 5.01(b), Alcoholic Beverage Code, is amended to read as follows:

(b) The Texas Alcoholic Beverage Commission [commission] is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), but is not abolished under that Act. The commission shall be reviewed under that Act during the period in which state agencies abolished September 1, 1991, and every 12th year after that date, are reviewed[. Unless it is continued in existence as provided by that Act, the commission is abolished and this code expires on September 1, 1987].

SECTION 18. Article 6701I-1, Revised Statutes, is amended by amending Subsections (a) and (f) and adding Subsection (j) to read as follows:

(a) In this article:

(1) "Alcohol concentration" means:

(A) the number of grams of alcohol per 100 milliliters of blood;

(B) the number of grams of alcohol per 210 liters of breath; or

(C) the number of grams of alcohol per 67 milliliters of urine.

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or

(B) having an alcohol concentration of 0.10 [percent] or more.

(3) "Serious bodily injury" means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(4) "Public place" has the meaning assigned by Section 1.07(a)(29), Penal Code.

(5) "Controlled substance" has the meaning assigned by Subdivision (5), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(6) "Drug" has the meaning assigned by Subdivision (14), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(7) "Alcoholic beverage" has the meaning assigned by Section 1.04(1), Alcoholic Beverage Code.

(f) If it is shown on the trial of a person punished for an offense under Subsection (c), (d), or (e) of this article that the person committed the offense and as a direct result of the offense another person suffered serious bodily injury, the minimum term of confinement for the offense is increased by 60 days and the minimum and maximum fines for the offense are increased by \$500. If it is shown on the trial of a person punished for an offense under this article that the person committed the offense and at the time of the offense the person was operating a motor vehicle with an open container of an alcoholic beverage present in the passenger portion of the vehicle, the minimum term of confinement for the offense is increased by:

(1) three days, and the minimum and maximum fines for the offense are increased by \$100, if the person is punished for an offense under Subsection (c) of this article;

(2) six days, and the minimum and maximum fines for the offense are increased by \$200, if the person is punished for an offense under Subsection (d) of this article; and

(3) 12 days, and the minimum and maximum fines for the offense are increased by \$400, if the person is punished for an offense under Subsection (e) of this article.

(j) The increases in maximum and minimum punishments provided by Subsection (f) of this article are cumulative. If it is shown on the trial of the offense that the person committed the offense, that as a direct result of the offense a person suffered serious bodily injury, and that at the time of the offense the person was operating a motor vehicle with an open container of an alcoholic beverage present in the passenger portion of the vehicle, both increases in punishment authorized by Subsection (f) apply.

SECTION 19. The change in law made by Sections 1, 7, and 8 of this Act applies only to a violation that occurs on or after the effective date of this Act. A violation occurring before the effective date of this Act is covered by the law in effect when the violation was committed, and the former law is continued in effect for this purpose.

SECTION 20. (a) The change in law made by Section 18 of this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 21. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

GLASGOW  
SARPALIUS

The amendment was read and was adopted.

On motion of Senator McFarland and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

#### **HOUSE BILL 1819 ON THIRD READING**

Senator McFarland moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 1819 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

#### **HOUSE BILL 2298 REREFERRED**

On motion of Senator Leedom and by unanimous consent, H.B. 2298 was withdrawn from the Committee on Finance and rereferred to the Committee on Intergovernmental Relations.

#### **SENATE BILL 1464 ON SECOND READING**

On motion of Senator Howard and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1464**, Relating to a supplemental appropriation to the Board of Chiropractic Examiners.

The bill was read second time and was passed to engrossment.

**SENATE BILL 1464 ON THIRD READING**

Senator Howard moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1464** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 1452 ON SECOND READING**

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1452**, Relating to a transfer of funds and a supplemental appropriation for disasters and emergencies.

The bill was read second time and was passed to engrossment.

**SENATE BILL 1452 ON THIRD READING**

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1452** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 16, 1985

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**S.B. 464**, Relating to the continuation, composition, powers, and duties of the Texas Parks and Wildlife Department. (Substituted with amendment)

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

**HOUSE BILL 556 ON SECOND READING**

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 556**, Relating to the authority of county and precinct officers to accept the payment by credit card of a fee, fine, court cost, or other charge, to collect a fee for processing the payment and a service charge for payments that are not honored, and to contract to seize unauthorized credit cards.

The bill was read second time.

Senator Lyon offered the following amendment to the bill:

Amend **H.B. 556** by striking all below the enacting clause and substituting the following:

relating to the authority of county, precinct and municipal officers to accept the payment by credit card of a fee, fine, court cost, or other charge and to collect a fee for processing the payment and a service charge for payments that are not honored, and to contract to seize unauthorized credit cards.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

Section 1. Definition. In this Act, "credit card" means a card, plate or similar device used to make purchase on credit or to borrow money.

**SECTION 2. PAYMENT OF FEES, OR COSTS BY CREDIT CARD.** (a) The commissioners court of a county may authorize a county or precinct officer who collects fees, fines, court costs, or other charges to:

(1) accept payment by credit card of a fee, fine, court cost, or other charge; and

(2) collect a fee for processing the payment by credit card.

(b) The governing body of an incorporated city, town, or village may authorize a municipal officer or official who collects fees, fines, court costs, or other charges to:

(1) accept payment by credit card of a fee, fine, court cost, or other charge; and

(2) collect a fee for processing the payment by credit card.

**SECTION 3. PROCESSING FEE.** (a) The commissioners court shall set the processing fee in an amount that is reasonably related to the expense incurred by the county or precinct officer in processing the payment by credit card. However, the court may not set the processing fee in an amount that exceeds five percent of the amount of the fee, court cost, or other charge being paid.

(b) The governing body of an incorporated city, town, or village shall set the processing fee in an amount that is reasonably related to the expense incurred by the municipal officer or official in processing the payment by credit card. However, the governing body may not set the processing fee in an amount that exceeds five percent of the amount of the fee, court cost, or other charge being paid.

**SECTION 4. DISPOSITION OF PROCESSING FEE.** (a) The county or precinct officer collecting a processing fee shall deposit the fee in the general fund of the county.

(b) The municipal officer or official collecting a processing fee shall deposit the fee in the general fund of the municipality.

**SECTION 5. SERVICE CHARGE.** If a payment by credit card is not honored for any reason by the credit card company on which the funds are drawn, the county or municipality is authorized to collect a service charge from the person owing the fee, fine, court cost, or other charge. The service charge is in addition to the original fee, fine, court cost, or other charge and is for the collection of that original amount. The amount of the service charge is the same amount as the fee charged for the collection of a check drawn on an account with insufficient funds.

(a) The county or precinct officer collecting a service charge shall deposit the charge in the general fund of the county.

(b) The municipal officer or official collecting a service charge shall deposit the fee in the general fund of the municipality.

**SECTION 6. ENCUMBRANCE OF CREDIT CARDS; FEE.** A county or municipality is authorized to contract with a company issuing credit cards to collect and seize credit cards issued by the company that are outdated or otherwise



unauthorized. The county or municipality may charge the company a fee for the return of the credit cards.

(a) The county or precinct officer collecting the fee shall deposit this fee in the general fund of the county.

(b) The municipal officer or official collecting the fee shall deposit this fee in the general fund of the municipality.

**SECTION 7. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

#### **HOUSE BILL 556 ON THIRD READING**

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 556** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **HOUSE CONCURRENT RESOLUTION 105 ON SECOND READING**

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

**H.C.R. 105**, Creating the Select Committee on Higher Education.

The resolution was read second time and was adopted.

#### **HOUSE BILL 1012 ON THIRD READING**

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

**H.B. 1012**, Relating to the authority of the board of directors of Texas Southern University to sell, exchange, or lease land.

The bill was read third time and was finally passed.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1280 ON SECOND READING**

Senator Farabee asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**C.S.H.B. 1280**, Relating to certain employment, sales, and leasing practices; providing penalties.

There was objection.

Senator Farabee then moved to suspend the regular order of business and take up **C.S.H.B. 1280** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 7.

Yeas: Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parmer, Santiesteban, Sarpalius, Sharp, Truan, Uribe, Washington, Whitmire.

Nays: Brown, Howard, Jones, Parker, Sims, Traeger, Williams.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 1280 by striking all below the enacting clause and substituting the following:

SECTION 1. Title 83, Revised Statutes, is amended by adding Article 5165.4 to read as follows:

"Article 5165.4. WEEKLY DAY OFF

"SECTION 1. (a) An employer, whether a person, firm, partnership, or corporation, may not require an employee to work seven consecutive days in an establishment whose business is selling merchandise at retail. The employer may not deny the employee at least one period of 24 consecutive hours of time off for rest or worship in each seven-day period. This time off must be in addition to the regular periods of rest allowed during each day worked. In addition, the employer may not require the employee to work during a period that the employee requests to be off to attend one regular worship service a week of the employee's religion.

"(b) This section does not apply to part-time employees whose total work hours for one employer do not exceed 30 hours during a calendar week.

"Section 2. An employer who violates this Article commits an offense. An offense under this section is a Class C misdemeanor."

SECTION 2. Section 1, Chapter 15, Acts of the 57th Legislature, 1st. Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. In this Act:

"(1) 'clothing' means: a dress, sweater, blouse, skirt, suit, trousers, shirt, coat, jacket, pants, shoes, or boots;

"(2) 'furniture' means: a chair, table, sofa, desk, cabinet, bed, dresser, mattress, carpet, or rug;

"(3) 'jewelry' means: a precious or semi-precious stone, a ring, necklace or bracelet containing gold, silver, or platinum, a pearl, a watch, or a piece of silver flatware;

"(4) 'appliance' means: a refrigerator, food freezer, cooking stove or range, clothes washing machine, clothes dryer, dishwasher, television set, video recorder, personal or home computer, or a stereo system;

"(5) 'motor vehicle' means a self propelled vehicle of two or more wheels designed to transport a person or property, whether or not it is required by law to have a certificate of title, and whether or not it may be driven legally on a public street or highway;

"(6) 'Person' means a natural person, firm, partnership, corporation or other legal entity.

"(7) 'Employer' means a person who owns a retail facility that sells or offers for sale clothing, furniture, jewelry, an appliance, or a motor vehicle or a person who has the authority to determine the hours of operation of such retail facility."

[Any person, on both the two (2) consecutive days of Saturday and Sunday, who sells or offers for sale or shall compel, force or oblige his employees to sell any

clothing, clothing accessories, wearing apparel, footwear, headwear, home, business, office or outdoor furniture, kitchenware, kitchen utensils, china, home appliances, stoves, refrigerators, air conditioners, electric fans, radios, television sets, washing machines, driers, cameras, hardware, tools, excluding non-power driven hand tools, jewelry, precious or semi-precious stones, silverware, watches, clocks, luggage, motor vehicles, musical instruments, recordings, toys, excluding items customarily sold as novelties and souvenirs, mattresses, bed coverings, household linens, floor coverings, lamps, draperies, blinds, curtains, mirrors, lawn mowers or cloth piece goods shall be guilty of a misdemeanor. Each separate sale shall constitute a separate offense.]

SECTION 3. Chapter 15, Acts of the 57th Legislature, 1st. Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes), is amended by adding Section 1A to read as follows:

"Section 1A. (a) Except as provided by Section 7 of this Act, no person may on both the consecutive days of Saturday and Sunday, sell or offer for sale, or compel the person's employees to sell or offer for sale, clothing, jewelry, furniture, an appliance, or a motor vehicle.

"(b) Each day a prohibited item is offered for sale is a separate violation of this Act. Each sale of a prohibited item is a separate violation of this Act."

SECTION 4. Section 2, Chapter 15, Acts of the 57th Legislature, 1st. Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2. (a) Nothing herein shall apply to any sale or sales for charitable purposes or to items used for funeral or burial purposes or to items sold as part of or in conjunction with the sale of real property.

"(b) This Act does not prohibit the occasional sale of any item enumerated in Section 1A of this Act by a person not engaged in the business of selling that item."

SECTION 5. Section 3, Chapter 15, Acts of the 57th Legislature, 1st. Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3. (a) The penalty for the first violation of this Act is a civil fine not to exceed \$500. If previously found to have violated this Act, the penalty for the second violation of this Act is a civil fine not less than \$500 and not more than \$1,000. If previously found to have violated this Act two or more times, the penalty for the third and each subsequent violation of this Act is a civil fine not less than \$1,000 and not more than \$5,000.

"(b) The attorney general or a district, county, or city attorney may enforce this Act and may bring an action in a court of competent jurisdiction in the county in which a violation is alleged.

"(c) On a finding by the trier of fact that a violation of this Act was committed willfully or with conscious indifference to the provisions of law, the court may treble the fine otherwise due as penalty for the violation.

"(d) An employer is a necessary party to an action brought against its employee alleging a violation of this Act by the employee. An employer is strictly liable to pay all sums including civil fines, costs and attorney's fees levied as a result of a violation of this Act by its employee.

"(e) It is an affirmative defense to an action brought under this section alleging a violation of this Act if the person charged with a violation proves that:

(1) the employer has a on-going training program to inform employees concerning the provisions of this Act and has instructed employees not to violate this Act;

(2) the act or acts which are the basis of the proceeding were inadvertently committed contrary to the employer's instructions; and

(3) the employer has not been previously found to have violated this Act."  
[For the first offense under this Act, the punishment shall be by fine of not more than One Hundred Dollars (\$100.00). If it is shown upon the trial of a case involving a violation of this Act that defendant has been once before convicted of the same offense, he shall on his second conviction and on all subsequent convictions be punished by imprisonment in jail not exceeding six (6) months or by a fine of not more than Five Hundred Dollars (\$500.00), or both.]

SECTION 6. Section 4, Chapter 15, Acts of the 57th Legislature, 1st. Called, 1961 (Article 9001, Vernon's Texas Civil Statutes), is amended to read as follows:

"SECTION 4. The purpose of this Act being to promote the health, recreation and welfare of the people of this state, the operation of any business whether by any individual, partnership or corporation contrary to the provisions of this Act is declared to be a public nuisance and any person may apply to any court of competent jurisdiction for and may obtain an injunction restraining such violation of this Act. Such proceeding shall be guided by the rules of other injunction proceedings. A person who successfully brings an action under this Section to enjoin a violation of this Act may recover costs, including court costs and reasonable attorney's fees."

SECTION 7. Section 5, Chapter 15, Acts of the 57th Legislature, 1st. Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes), is repealed.

SECTION 8. Chapter 15, Acts of the 57th Legislature, 1st. Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes), is amended by adding Section 7, to read as follows:

"Section 7. (a) This Act does not prohibit the sale or offering for sale of any item except a motor vehicle for a period beginning on the last Saturday in November and ending on the first Sunday of the following January, inclusive.

"(b) During the period described in Subsection (a) of this Section, a person may not sell or offer for sale an item enumerated in Section 1A of this Act prior to 1:00 P.M. on one of the consecutive days of Saturday and Sunday."

SECTION 9. Litigation filed prior to the effective date of this Act is not affected by this Act.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

On motion of Senator Farabee, the amendment was tabled by the following vote: Yeas 17, Nays 14.

Yeas: Barrientos, Blake, Brooks, Edwards, Farabee, Harris, Henderson, Krier, Mauzy, McFarland, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Brown, Caperton, Glasgow, Howard, Jones, Kothmann, Leedom, Lyon, Montford, Parker, Sarpalius, Sharp, Sims, Traeger.

(President in Chair)

Senator Farabee offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 1280 by striking Sec. 2 of SECTION 3, Art. 6686-1 of the bill and substituting the following:

Sec. 2. (a) No person may, on both the consecutive days of Saturday and Sunday, sell or offer for sale, or compel the person's employees to sell or offer for sale a motor vehicle.

(b) Each day a motor vehicle is offered for sale is a separate violation of this Act. Each sale of a motor vehicle is a separate violation of this Act.

The amendment was read and was adopted by the following vote: Yeas 27, Nays 4.

Yeas: Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Harris, Henderson, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Brown, Glasgow, Howard, Traeger.

Senator Farabee offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 1280**, SECTION 1, Section 1(a) of Article 5165.4, by inserting the following language between "worked." and "In":

The employer will accommodate the religious beliefs and practices of the employee unless the employer can demonstrate that to do so would constitute an undue hardship on the conduct of his business.

The amendment was read and was adopted.

Senator Caperton offered the following amendment to the bill:

Floor Amendment No. 4

Amend the committee printing of **C.S.H.B. 1280** by adding Section 4 to Article 5165.4 after line 37 of page 1 as follows:

"Section 4. It is an affirmative defense to prosecution under Section 3 that the employee volunteered for work on the seventh consecutive day and that the employee executed a written statement so stating. Such statement must also contain a provision, signed by the employer or his agent, that the employer did not require such work."

The amendment was read and was adopted.

Senator Traeger offered the following amendment to the bill:

Floor Amendment No. 5

Amend **C.S.H.B. 1280** by deleting Section 2, lines 38 through 44.

The amendment was read.

On motion of Senator Farabee, the amendment was tabled by the following vote: Yeas 19, Nays 12.

Yeas: Barrientos, Brooks, Farabee, Glasgow, Harris, Henderson, Kothmann, Leedom, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Blake, Brown, Caperton, Edwards, Howard, Jones, Krier, Lyon, Sarpalius, Sharp, Sims, Traeger.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

**MOTION TO PLACE  
COMMITTEE SUBSTITUTE HOUSE BILL 1280 ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 1280 be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 22, Nays 9. (Not receiving four-fifths vote of Members present)

Yeas: Barrientos, Brooks, Caperton, Edwards, Farabee, Harris, Henderson, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Truan, Uribe, Whitmire.

Nays: Blake, Brown, Glasgow, Howard, Jones, Sims, Traeger, Washington, Williams.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 16, 1985

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**S.B. 398**, Relating to changing the name of the Veterans Affairs Commission to the Texas Veterans Commission.

**S.B. 150**, Relating to the declaration of Texas Sesquicentennial Day as a holiday.

**S.B. 449**, Relating to the deposit, investment, and management of county funds and to the imposition of certain handling charges involving county funds or funds held in trust by a county or district clerk; imposing certain fees. (With amendments)

**S.B. 216**, Relating to the powers of governing boards of institutions of higher education to fix the rate of incidental student fees.

**S.B. 351**, Relating to changing the name of the Texas Department of Human Resources to the Texas Department of Human Services.

**S.B. 233**, Relating to the processing of claims and accounts and the issuance of warrants and the powers and duties of the comptroller of public accounts.

**S.B. 395**, Relating to certain requirements for eligibility for benefits and payments by reimbursing employers under the unemployment compensation laws.

**S.B. 956**, Relating to providing fidelity bonds for officers, employees, directors, and partners of health maintenance organizations and to certification of taxes paid by health maintenance organizations.

**S.B. 894**, Relating to a program to furnish oral health services to eligible individuals and to the establishment of the Oral Health Improvement Services Program within the Department of Health. (With amendment)

**H.B. 2358**, Relating to amendments to the Solid Waste Disposal Act and

Chapter 26 Water Code, which: expand and restate the state solid waste management policy; add conforming definitions; require interagency coordination....

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

### HOUSE BILL 10 ON SECOND READING

The President laid before the Senate on its second reading and passage to third reading with Floor Amendment No. 2 pending:

**H.B. 10**, Relating to the continued effect of laws relating to the interception and use of wire or oral communications.

Question - Shall Floor Amendment No. 2 be adopted?

Senator Washington offered the following substitute for the pending amendment to the bill:

Floor Amendment No. 3

Substitute the following for Floor Amendment No. 2:

Amend **H.B. 10** by adding the following Sections, appropriately numbered:

SECTION \_\_\_\_\_. Section 1, Article 18.20, Code of Criminal Procedure, is amended by adding Subsections (13) and (14), to read as follows:

(13) "Residence" means a structure or the portion of a structure used as a person's home or fixed place of habitation to which the person indicates an intent to return after any temporary absence;

(14) "Pen register" means a mechanical or electronic device that attaches to a telephone line and is capable of recording outgoing numbers dialed from that line but is not capable of recording the origin of an incoming communication to that line or the content of a communication carried between that line and another line.

SECTION \_\_\_\_\_. Section 8, Subsection (a), Subdivision (5), Article 18.20, Code of Criminal Procedure, is amended to read as follows:

(5) a statement whether [or not] a covert entry will be necessary to properly and safely install the wiretapping or electronic surveillance or eavesdropping equipment [;] and, if a covert entry is requested, a statement as to why such an entry is necessary and proper under the facts of the particular investigation [shall be required], including a full and complete statement as to whether other investigative techniques have been tried and have failed or why they reasonably appear to be unlikely to succeed or to be too dangerous if tried or are not feasible under the circumstances or exigencies of time.

SECTION \_\_\_\_\_. Section 9, Article 18.20, Code of Criminal Procedure is amended by adding new Subsections (e) and (f), to read as follows, and relettering the current Subsections (e) and (f) accordingly:

(e) An order entered pursuant to this section may not authorize a covert entry into a residence solely for the purpose of intercepting a wire communication.

(f) An order entered pursuant to this section may not authorize a covert entry into or onto a premises for the purpose of intercepting an oral communication unless

(1) the judge, in addition to making the determinations required under Subsection (a) of this section, determines that

(A)(i) the premises into or onto which the covert entry is authorized or the person whose communications are to be obtained has been the

subject of a pen register previously authorized in connection with the same investigation;

(ii) the premises into or onto which the covert entry is authorized or the person whose communications are to be obtained has been the subject of an interception of wire communications previously authorized in connection with the same investigation; and

(iii) that such procedures have failed; or

(B) that the procedures enumerated in Paragraph (A) reasonably appear to be unlikely to succeed or to be too dangerous if tried or are not feasible under the circumstances or exigencies of time; and

(2) the order, in addition to the matters required to be specified under Subsection (b), specifies that the covert entry is for the purpose of intercepting oral communications of two or more persons and that there is probable cause to believe they are committing, have committed or are about to commit a particular offense enumerated in Section 4 of this Article.

WASHINGTON  
MAUZY

The amendment was read and was adopted.

Floor Amendment No. 2 as substituted was then adopted.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 4

Amend H.B. 10 by adding the following Sections, appropriately numbered to read as follows:

SECTION 2. Chapter 18, Code of Criminal Procedure, 1965, is amended by adding Article 18.21 to read as follows:

"Article 18.21 PEN REGISTERS

"Section 1. DEFINITIONS. In this article:

"(1) 'Department' means the Department of Public Safety.

"(2) 'Pen register' means a mechanical or electronic device that attaches to a telephone line and is capable of recording outgoing numbers dialed from that line but is not capable of recording the origin of an incoming communication to that line or the content of a communication carried between that line and another line.

"Section 2. APPLICATION AND ORDER. (a) A peace officer commissioned by the department may request an attorney for the state to file an application with a judge of the judicial district in which the proposed installation will be made for the installation and use of a pen register to obtain information material to the investigation of a criminal offense. A district or criminal district attorney may on his own motion file an application under this section. The district or criminal district attorney who is acting on his own motion must make the application personally and may not do so through an assistant or some other person acting on his behalf.

"(b) The application must be made in writing under oath and must include the name of the subscriber, the telephone number or numbers, and the location of the telephone instrument or instruments on which the pen register will be utilized. The application must also state that the installation and utilization of the pen register will be material to the investigation of a criminal offense.

"(c) On presentation of the application, the judge may order the installation and utilization of the pen register by a peace officer commissioned by the department, and in the order the judge shall direct a communication common carrier, as defined by Section 153(h), Title 47, United States Code, to furnish all information, facilities, and technical assistance necessary to facilitate the



installation and utilization of the pen register by the department unobtrusively and with a minimum of interference to the services provided by the carrier. The carrier is entitled to compensation at the prevailing rates for the facilities and assistance provided to the department.

“(d) An order for the installation and utilization of a pen register is valid for not more than 30 days from the date the order is granted, unless prior to the expiration of the order, the district or criminal district attorney who made the original application or the department, through the attorney for the state, applies for and obtains from the court an extension of the order. The period of extension may not exceed 30 days for each extension granted.

“(e) The district court shall seal an application and order for the installation and utilization of a pen register granted under this article. The contents of an application or order may not be disclosed except in the course of a judicial proceeding and an unauthorized disclosure is punishable as contempt of court.”

SECTION 3. Chapter 16, Penal Code, is amended by adding Section 16.03 to read as follows:

“Section 16.03. UNLAWFUL USE OF PEN REGISTER. (a) Except as authorized by a court order obtained under Article 18.21, Code of Criminal Procedure, 1965, a person commits an offense if he knowingly installs or utilizes a pen register to record telephone numbers dialed from a telephone instrument.

“(b) In this section, ‘pen register’ has the same meaning as is given that term in Article 18.21, Code of Criminal Procedure, 1965.

“(c) It is an exception to the application of Subsection (a) of this section that an officer, employee, or agent of a communication common carrier, as defined by Section 153(h), Title 47, United States Code, installs or utilizes a device or equipment to record the numbers dialed from a telephone instrument in the normal course of business of the carrier or assists a peace officer commissioned by the Department of Public Safety in executing an order issued under Article 18.21, Code of Criminal Procedure, 1965.

“(d) It is an affirmative defense to prosecution under this section that the installation or utilization of a pen register was made by an officer, agent, or employee of a lawful enterprise while engaged in an activity that is a necessary incident to the rendition of service or to the protection of property of or services provided by the enterprise, and was not made for the purpose of gathering information for a law enforcement agency or private investigative agency, other than information related to the theft of communication or information services provided by the enterprise.

“(e) An offense under this section is a felony of the third degree.

“(f) A pen register used in violation of this section is subject to seizure and may be forfeited to the Department of Public Safety in the manner provided for disposition of seized property by Article 18.18, Code of Criminal Procedure, 1965, as amended.”

SECTION 4. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted.

On motion of Senator Howard and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

### RECORD OF VOTES

Senators Barrientos, Caperton, Mauzy and Washington asked to be recorded as voting "Nay" on the passage of the bill to third reading.

### HOUSE BILL 10 ON THIRD READING

Senator Howard moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 10** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Blake, Brooks, Brown, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Williams.

Nays: Barrientos, Caperton, Washington, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4.

Yeas: Blake, Brooks, Brown, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Barrientos, Caperton, Mauzy, Washington.

### SENATE BILL 1470 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1470**, Relating to the financing of primary elections.

The bill was read second time.

Senator Jones offered the following amendment to the bill:

Floor Amendment No. 1

Amend **S.B. 1470** as follows:

On page 9 renumber Sections 6, 7, and 8 as Sections 7, 8, and 9 and insert a new Section 6 to read as follows:

**SECTION 6.** Section 186(c) Texas Election Code (article 13.08, Vernon's Texas Election Code is amended to read as follows:

(c) The schedule of filing fees for either a full term or an unexpired term for the various offices is as follows:

( 1 ) United States Senator .....	\$4,000 ..	[\$2,000]
( 2 ) All other statewide offices .....	3,000 ..	[ 1,500]
( 3 ) United States representative .....	2,500 ..	[ 1,500]
( 4 ) State senator .....	1,000 ..	[ 750]
( 5 ) State representative .....	600 ..	[ 400]
( 6 ) Member, state board of education .....		250

( 7 )	Chief justice or associate justice, court of appeals .....	<u>1,500</u> .. [ 750]
( 8 )	District judge or judge of any court having status of a district court as classified in Section 61c of this code, as added and amended (Article 6.05c, Vernon's Texas Election Code) .....	<u>1,200</u> .. [ 700]
( 9 )	Judge of a statutory county court or judge of any court having status of a county court as classified in Section 61c of this code, as added and amended (Article 6.05c, Vernon's Texas Election Code), other than the constitutional county court .....	<u>1,200</u> .. [ 700]
(10)	District attorney or criminal district attorney or county attorney that performs the same functions as either of the above .....	<u>1,000</u> .. [ 600]
(11)	A county office as classified in Section 61c of this code, as added and amended (Article 6.05c, Vernon's Texas Election Code), for which a specific fee is not set by this subsection .....	<u>600</u> .. [ 300]
(12)	County surveyor or inspector of hides and animals .....	50
(13)	Judge of the constitutional county court and county commissioner; County of 200,000 or more inhabitants .....	<u>1,000</u> .. [ 600]
	County under 200,000 inhabitants .....	<u>600</u> .. [ 300]
(14)	Justice of the peace or constable, County of 200,000 or more inhabitants .....	<u>800</u> .. [ 500]
	County under 200,000 inhabitants .....	<u>300</u> .. [ 200]
(15)	Public weigher .....	50
No fee shall be charged for any office of a political party.		

The amendment was read and was adopted.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

#### RECORD OF VOTES

Senators Mauzy and Washington asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**SENATE BILL 1470 ON THIRD READING**

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 1470 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Mauzy, Parmer, Washington.

The bill was read third time and was passed.

**RECORD OF VOTES**

Senators Barrientos, Mauzy, Montford, Parmer, Washington and Whitmire asked to be recorded as voting "Nay" on the final passage of the bill.

**SENATE BILL 1267 WITH HOUSE AMENDMENTS**

By unanimous consent, Senator Brooks called S.B. 1267 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.  
Committee Amendment No. 1 - Robnett

Substitute the following for S.B. 1267:

**A BILL TO BE ENTITLED****AN ACT**

relating to regulation of manufactured housing; providing for transportation, installation, registration, fees, bonds and security, and penalties; amending the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), by adding Sections 3A and 4A, Subsection (p) to Section 7 and Subsection (j) to Section 13 and by amending Subsection (g) of Section 3, Subsections (d) and (f) of Section 6, Subsections (k) and (n) of Section 7, Section 8, Subsections (r) and (h) of Section 11, Subsections (g) and (h) of Section 13, Section 17, and Subsections (d) and (f) of Section 18 and Section 20; amending Article 6701-1/2, Revised Statutes, as amended.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 6701-1/2, Revised Statutes, is amended to read as follows:

Art. 6701-1/2. A. Manufactured housing as defined by the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and factory-built housing or buildings as defined by the Industrialized Building Code Act (Article 5221f-1, Vernon's Texas Civil Statutes) which is in excess of legal size ~~[width or length]~~ limits for motor vehicles as defined by law shall not be moved over the highways, roads and streets in this state except in accordance with permits issued by the State Department of Highways and Public Transportation. Counties and municipalities ~~[Local political subdivisions]~~ may designate to said department the routes to be used within the limits of their jurisdiction ~~[such subdivision]~~; however, no additional permit, bond, fee or license issued by a county or municipality may be required ~~[by the local political subdivision]~~. For purposes of this Article, the terms "manufactured housing" or "manufactured home" also mean and refer to factory-built housing or buildings and

include temporary chassis systems and returnable undercarriages used for the transportation of the home or building; the terms also refer to a transportable section which is transported on a chassis system or returnable undercarriage and which is constructed so that it cannot, without dismantling or destruction, be transported within the legal size limits for motor vehicles.

B.(1) The application for a permit and the permit shall be in the form as prescribed by the State Department of Highways and Public Transportation; however, the ~~[application and]~~ permit must contain the overall length, width, and height of the manufactured home and the [overall length and width of the] towing vehicle [and the manufactured home] in combination. ~~[The length and width of the manufactured home shall be measured in accordance with the rules and regulations of the Texas Department of Labor & Standards relating to the titling of the manufactured home.]~~ The overall combined length of the manufactured home and the towing vehicle shall include the length of the hitch or towing device. The height shall be measured from the roadbed to the highest elevation of the manufactured home. The width of the home or section shall include any roof or eave extension or overhang on either side.

(2) The permit shall contain the route for the transportation of the manufactured home from the point of origin to the point of destination. The route shall be the shortest practical distance including divided and interstate systems, except where construction is in progress, or bridge or overpass width or height would create a safety hazard, or except highways in urban areas with heavy traffic conditions [distance practical taking into account the conditions of the highways, roads, and streets and the length, width, and height of the manufactured home].

C.(1) The State Department of Highways and Public Transportation shall ~~[not] only~~ issue ~~[a]~~ permits to ~~[any]~~ persons ~~[which is not]~~ registered as manufacturers or retailers with the Texas Department of Labor & Standards or ~~[which is not]~~ certificated for the transportation of manufactured housing by the Railroad Commission of Texas or the Interstate Commerce Commission except as otherwise expressly authorized by this section. The registration number or the certificate number of the person to whom the permit is issued shall be affixed to the rear of the manufactured home during transportation with letters and numbers which are at least eight (8) inches in height.

(2) The State Department of Highways and Public Transportation may issue single trip permits to owners of manufactured homes provided that the ownership of the manufactured home and of the towing vehicle is shown to be the same person by the title to the home and to the towing vehicle or that a lease duly filed pursuant to Article 6701c-1 (Vernon's Texas Civil Statutes) shows the owner of the manufactured home to be the lessee of the towing vehicle. Single trip permits may also be issued to installers registered with the Department of Labor and Standards for the transportation of manufactured homes over routes between points when such transportation would be excluded from regulation under the Motor Carrier Act (Article 911b, Vernon's Texas Civil Statutes). The owner or installer must have proof of insurance coverage in force as required in Section H. of this Article.

D. ~~[There shall also accompany the application for permit a]~~ A fee of Ten Dollars (\$10)[, which fee] for each permit shall be collected by the State Department of Highways and Public Transportation and deposited in the Treasury of the State of Texas to the credit of the State Highway Fund. [Said fee shall be paid by cashiers or certified check, postal or express money order.] On application said department shall issue permit books or packets containing twenty (20) [fifty (50) or one hundred (100)] individual permits provided that the aggregate fee of Ten Dollars (\$10) per permit is received with such application. The book type permit can be used for the movement of any manufactured home regardless of width, length or height, and route approval can be secured by telephone from the issuing office along with any required validation number for the permit.

E.(1) All manufactured homes which exceed twelve (12) feet in total width shall have one rotating amber beacon of not less than eight (8) inches mounted somewhere on the roof at the rear of the manufactured home. In addition the towing vehicle shall have one rotating amber beacon of not less than eight (8) inches mounted on top of the cab. These beacons shall be operational during any permitted move over the highways, roads, and streets of this state.

(2) All manufactured homes which exceed sixteen (16), but are not more than eighteen (18), feet in total width shall have one escort flag vehicle which shall precede the home on two lane roadways and shall follow the home on roadways of four or more lanes.

(3) All manufactured homes which exceed eighteen (18) feet in total width shall be both preceded and followed by an escort flag vehicle during any movement over the highways, roads, and streets of this state.

(4) Escort flag vehicles shall have two simultaneous flashing lights or shall have one rotating amber beacon of not less than eight (8) inches on top of the vehicle, which shall be visible from both front and rear, shall have one red sixteen (16) inch square flag mounted on each of the four corners of the vehicle, and shall have a "wide load" sign mounted on the front and rear of the vehicle; the sign shall have a yellow background with black letters at least eight (8) inches in height.

(5) Two transportable sections of a multi-section manufactured home, or two single section manufactured homes, when towed together in convoy shall be considered one home for purposes of the escort flag vehicle requirements of this Article, provided the distance between the two units does not exceed 1,000 feet.

(6) The State Department of Highways and Public Transportation shall publish a map or a list updated annually of all bridges or overpasses, which due to height or width, require an escort flag vehicle to stop on-coming traffic while the manufactured home crosses the bridge or overpass.

(7) No escort flag vehicles may be required except as expressly authorized in this section [If the width or overall length of the manufactured home and the towing vehicle in combination is in excess of sixteen feet or one hundred feet, respectively, the State Department of Highways and Public Transportation shall require one or more escort vehicles as necessary for traffic safety, and the department may require proof of property damage or liability insurance in an amount sufficient to cover any damage to the highways, roads, and streets or property of the state or local subdivisions as a result of the transportation of the manufactured home].

F. A [The] permit[s] shall be good for a period of up to ten (10) days and valid only for a single continuous movement.

G. Movements authorized by the [said] permits shall be made during daylight hours only and may be made on any day except national holidays. The State Department of Highways and Public Transportation may also limit the hours for travel on certain routes because of heavy traffic conditions; the department shall publish any limitations on movements during national holidays or any limitations during certain hours of heavy traffic conditions and make such publications available to the public prior to the limitations becoming effective.

H.(1) A manufactured home shall not be towed in excess of posted speed limits or 55 miles per hour whichever is less.

(2) Brakes on the towing vehicle and the manufactured home, temporary chassis system or returnable undercarriage, shall be capable of assuring that the maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet.

(3) Each manufactured home shall be equipped with a light-wiring harness during transportation over the roadways to provide right and left turn signal lights and braking or stopping lights and parking lights on the rear of the home.

(4) The towing vehicle shall be covered by liability insurance of not less than \$300,000 combined single limit.

1.(1) Any person who violates any provision of this Article is guilty of a Class C misdemeanor.

(2) Any person found guilty of violating the provisions of this Article may also be assessed a civil penalty of not less than \$200 nor more than \$500 for each of the following violations:

- (a) failing to obtain a permit; or
- (b) failing to have the required rotating amber beacons on the manufactured home or towing vehicle; or
- (c) failing to provide the escort flag cars as required; or
- (d) failing to have the required insurance coverage. The civil penalty may be awarded by the court having jurisdiction over Class C misdemeanors and shall be paid to the county in which the person was found guilty.

SECTION 2. Section 13, Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subsections (g) and (h) and by adding a new Subsection (j) to read as follows:

(g) Any manufacturer, retailer, broker, or installer who maintains a place of business at one or more locations shall file with the department a separate bond or other security for each location. Property used for the business that is not contiguous to a bonded location requires a separate bond. Any location at which a manufactured home is shown to the public or at which it is offered for sale, exchange, or lease-purchase by a retailer to consumers is a location which is required to be bonded. A manufactured home installed on a permanent foundation system and offered for sale as real estate is not a business location that requires a bond. A temporary location for a bona fide trade show sponsored by a nonprofit corporation which qualifies for tax exemption pursuant to Section 501(c) of the U.S. Internal Revenue Code is not a location which requires a bond.

(h) A manufacturer shall be bonded, supply a cash deposit or other security in the amount of \$500,000 ~~[\$100,000]~~. A retailer shall be bonded, supply a cash deposit or other security in the amount of \$100,000 ~~[\$50,000]~~. A broker shall be bonded, supply a cash deposit or other security in the amount of \$80,000 ~~[\$40,000]~~. An installer shall be bonded, supply a cash deposit or other security in the amount of \$20,000 ~~[\$10,000]~~. A person [Retailers, brokers, and installers] registered with the department and bonded prior to September 1, 1985 [1983], shall have until September 1, 1987 [January 1, 1984], to provide the additional amount of bond, cash deposit, or other security required by this Act for each location. A retailer holding a valid certificate of registration shall not be required to be bonded or file any security to secure a certificate of registration as a broker or an installer. A new bond shall not be required for any change of ownership of a person registered with the department nor for any change of a location; however, a proper endorsement of the original bond may be required by the department.

(j) A consumer may assign any claim against the bond or other security to any person registered with the department who has performed services for or rendered any benefit to the consumer, and the assignee is entitled to recover against the bond or other security in accordance with the terms of the assignment. Otherwise, a consumer may not assign any claim.

SECTION 3. Subsection (g), Section 3, Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

(g) "Consumer" means any person other than one registered under this article who seeks or acquires by purchase, exchange, or lease-purchase a manufactured home.

SECTION 4. Subsections (d) and (f), Section 6, Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) It is unlawful for any retailer, broker, or salesperson to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase any manufactured home to a consumer [person] in the state for use as a residence or dwelling, unless the manufactured home has affixed to it the appropriate seal, label, or decal.

(f) A person may not sell, exchange, or lease-purchase any manufactured home to a consumer [another person] in the state for use as a dwelling or residence, unless the manufactured home is habitable.

SECTION 5. Section 8, Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. USED MOBILE HOMES. A retailer or broker may not sell, exchange, or lease-purchase or negotiate for the sale, exchange, or lease-purchase of a used mobile home manufactured after December 12, 1969, to a consumer unless an appropriate seal or label is affixed to it. If the used mobile home does not have a seal or label, the retailer or broker must apply to the department for a seal with an affidavit that the manufactured home is habitable.

SECTION 6. Section 7, Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subsections (k) and (n) and by adding a new Subsection (p) to read as follows:

(k) The commissioner, after notice and hearing, may refuse to issue or may permanently revoke, or suspend for a definite period of time and for a specified [particular] geographic area or sales location, any certificate of registration [issued under this Act] if the commissioner finds that the applicant or registrant:

(1) knowingly and willfully violated any provision of this Act or any rule or regulation made pursuant to this Act [after receipt of actual notice of any failure to comply];

(2) without lawful authorization retained or converted any money, property, or any other thing of value from consumers in the form of down payments, sales and use taxes, deposits, or insurance premiums;

(3) failed to deliver proper title documents or certificates of title to consumers;

(4) failed to give or breached any manufactured home warranty required by this Act or by the Federal Trade Commission;

(5) engaged in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code; [or]

(6) failed to furnish or file any reports required by the department for the administration and enforcement of this Act;

(7) furnishing false information on any application, report, or other document filed with the department; or

(8) having a record of criminal convictions which, in the opinion of the department, renders the applicant unfit for registration.

(n) A person may not act as a salesperson of manufactured housing unless the person is registered with the department. Each applicant for a certificate of registration shall file with the department an application giving such information as the department deems necessary and pay the required fee. The owner of a sole proprietorship, a partner in a partnership, or an officer of a corporation which is duly registered as a retailer or broker does not have to register as a salesperson so long as such individual is properly listed in the retailer's or broker's application for registration. The salesperson is the agent of the retailer or broker, and the department may require the execution of an appropriate agency designation. The registration shall be an annual registration. A retailer or broker shall not employ, retain, or otherwise use the services of a salesperson who is not registered. A registered salesperson may work or sell for one or more retailers, brokers, or sales locations.



(p) The department must require at least forty hours of instruction in the law and consumer protection regulations for each person applying for registration as a retailer. The instruction shall be given not less than one time each calendar quarter in Austin. No test shall be made a prerequisite of registration, but actual attendance at the instruction sessions is required. The department may require instruction for other categories of registrants as may be necessary for the protection of the public health, safety and welfare. This subsection does not apply to any person registered in any category on September 1, 1985.

SECTION 7. Subsections (f) and (h), Section 11, Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(f) All fees assessed under this Act shall be paid to the State Treasurer and placed in the General Revenue Fund except the inspection fees paid pursuant to Subsections (a) and (c) of this section. Those fees shall be placed in a special manufactured housing inspection fund created in the state treasury which shall be used by the department as may be appropriated for the costs of inspections, investigations, and enforcement programs ~~[fee distributions to local governmental entities performing inspections pursuant to contracts or other official designations].~~

(h) The commissioner shall set the fees ~~[each fee]~~ imposed under this section in amounts ~~[an amount]~~ that are ~~[is]~~ reasonable and necessary to defray the costs of administering this Act. The fees for the issuance and annual renewal of all certificates of registration shall be not less than:

- (1) manufacturer's certificate of registration, \$1,000 annually;
- (2) retailer's certificate of registration, \$500 annually;
- (3) salesperson's certificate of registration, \$50 annually;
- (4) all other certificates of registration, \$200 annually.

SECTION 8. Section 17, Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Section 17. PENALTIES. (a) A person, individual, or director, officer, or agent of a corporation who knowingly and willfully violates a provision of this Act or any rule, regulation, or administrative order of the department in a manner that threatens the health or safety of any purchaser or consumer commits a Class A misdemeanor and on conviction shall be fined not more than \$2,000 ~~[\$1,000]~~ or shall be confined in the county jail not longer than one year or both.

(b) Any person who violates any provision of this Act or the rules, ~~[and]~~ regulations, or administrative orders of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation. In lieu of revoking or suspending the registration pursuant to Subsection (k) of Section 7 of this Act, and with the agreement of the registrant, the department may assess a civil penalty in an amount not to exceed \$1,000 for each and every violation of this Act or the rules, regulations, or administrative orders of the department, provided that the aggregate civil penalties as to any one registrant shall not exceed \$50,000 for any related series of violations occurring within one year from the date of the first violation.

(c) Whenever it appears that any person has violated or is threatening to violate any of the provisions of this Act or of the rules, regulations, or ~~[and]~~ administrative orders of the department, ~~[either]~~ the attorney general, ~~[or]~~ the department, or any person holding a valid registration pursuant to this Act may cause a civil suit to be instituted either for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both. If the injunctive relief is granted or a civil

penalty assessed, the plaintiff or petitioner shall be awarded reasonable attorney fees and costs of suit.

(d) Failure by a manufacturer or retailer to comply with the warranty provisions of this Act or any implied warranties or the violation of any provision of this Act by any person is a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code and is actionable pursuant to said subchapter. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of the remedies in this Act.

(e) Civil suits filed pursuant to this section shall be filed in a district court in Travis County, Texas, or in the county in which the violation, or threat of violation, occurred.

(f) Civil penalties assessed and recovered pursuant to this section shall be paid to the State Treasurer and placed in the General Revenue Fund.

SECTION 9. Subsections (d) and (f), Section 18, Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) If a retailer, broker, ~~[salesperson,]~~ or installer does not possess a valid certificate of registration at the time of entering into any contract with a consumer, the contract between the consumer and the retailer, broker, ~~[salesperson,]~~ or installer is voidable at the option of the consumer. A consumer's contract for the purchase, exchange, or lease-purchase of a new manufactured home is also voidable if the retailer purchased the home from an unregistered manufacturer in violation of Section 6, Subsection (h), of this Act.

(f) Notwithstanding any provisions of any other statute, regulation, or ordinance to the contrary, a registered [an] installer is not required to secure any permit, certificate, or license or pay any fee for the transportation of manufactured housing to the place where it is to be installed except as required by the department or by the State Department of Highways and Public Transportation pursuant to Article 6701-1/2, Title 116, Revised Statutes. The department shall cooperate with the State Department of Highways and Public Transportation by providing current lists of registered manufactured housing manufacturers, retailers, and installers ~~[shall cooperate with the department in the routing of the transportation of housing and shall not issue any permits for the transportation of manufactured housing except to persons holding valid certificates of registration issued by the department].~~

SECTION 10. Section 20, Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. NOTICE TO CONSUMERS BEFORE TITLE TRANSFER. (a) A retailer or manufacturer shall not transfer title to a HUD-Code manufactured home nor otherwise sell, assign or convey a HUD-Code manufactured home to a consumer without delivering the formaldehyde health notice required by this section subject to applicable rules of the department ~~[and Subsection (c) of this section]~~. The notice shall be delivered to the consumer prior to the execution of any mutually binding sales agreement or retail installment sales contract.

(b) The content of the notice shall be the same as required by the U.S. Department of Housing and Urban Development and of such type, size, and format as prescribed by the department. A retailer or manufacturer shall not vary the provisions or form of the notice. ~~[; it shall read as follows:~~

**WARNING**

**CERTAIN BUILDING MATERIALS USED IN THE  
CONSTRUCTION OF RESIDENTIAL DWELLINGS MAY  
RELEASE FORMALDEHYDE GAS INTO YOUR HOME**

~~OVER A LONG PERIOD OF TIME AND CAUSE OR  
CONTRIBUTE TO ADVERSE HEALTH EFFECTS.~~

~~FORMALDEHYDE GAS MAY CAUSE EYE, NOSE,  
AND THROAT IRRITATION, COUGHING, SHORTNESS OF  
BREATH, SKIN IRRITATION, NAUSEA, DROWSINESS,  
HEADACHES, AND DIZZINESS. PEOPLE WITH ASTHMA  
OR OTHER RESPIRATORY PROBLEMS OR ALLERGIES  
MAY SUFFER MORE SERIOUS REACTIONS, ESPECIALLY  
PERSONS ALLERGIC TO FORMALDEHYDE.~~

~~PROPER VENTILATION OF YOUR HOME MAY  
HELP REDUCE THE LEVEL OF FORMALDEHYDE.  
THEREFORE, PERIODIC AIRING OF YOUR HOME IS  
RECOMMENDED.~~

~~IF YOU HAVE QUESTIONS CONCERNING  
FORMALDEHYDE, CONTACT THE TEXAS DEPARTMENT  
OF LABOR AND STANDARDS. IF YOU HAVE HEALTH  
PROBLEMS, CONSULT YOUR DOCTOR.~~

~~Texas Department of Labor and Standards  
P.O. Box 12157  
Capitol Station  
Austin, TX 78711  
Telephone: 512/475-5712]~~

~~(c) [(†)] The knowing and willful failure of a retailer or a manufacturer to  
comply with the regulations of the U.S. Department of Housing and Urban  
Development or of the department is conclusive that such person breached the duty  
to notify the consumer about formaldehyde and the lack of habitability of the home;  
compliance with these regulations by a retailer or a manufacturer is conclusive that  
such person had due regard for the health and safety of the consumer and that the  
home is habitable as regards formaldehyde emissions [The legislature finds that  
substantial questions currently exist as to the health effects, if any, of formaldehyde  
gas; that sufficient evidence is not now available to determine whether or not  
formaldehyde is a health hazard; and further that additional research, testing, and  
hearings are necessary to make these determinations.~~

~~(2) The department shall determine whether or not formaldehyde emitted by  
building products and materials into the ambient air of manufactured housing is  
a serious health hazard and at what levels or concentrations, if any, it becomes a  
serious health hazard. This determination shall be made by contracting for  
appropriate research and for the testing of homes, by collecting data and  
information through coordination with all appropriate federal agencies and with the  
Texas Department of Health and Texas Air Control Board, and by conducting and  
holding hearings as necessary.~~

~~(3) If the department determines that there is not a serious health hazard, or  
that there is not a serious health hazard at or below certain levels or concentrations,  
the notice requirement contained in Subsection (a) of this section shall not apply  
except to those manufactured homes in which there is a level or concentration of  
formaldehyde if any, deemed by the department to be a serious health hazard.~~

~~(4) If it is determined that a serious health hazard exists at certain levels or  
concentrations, the department shall establish performance standards for building  
products and materials, prescribe testing procedures and the standards and  
conditions under which tests shall be conducted, and shall adopt rules and  
regulations, all as may be deemed necessary for the protection of the health, safety,  
and welfare of the consumer. The department shall also amend or modify the  
warning set forth in Subsection (b) of this section as required to assure that the  
consumer receives adequate information and notice of the health effects, if any, of  
formaldehyde in indoor ambient air and the risks, if any, of living in the home].~~

(d) The failure of retailer or manufacturer to comply with the provisions of Section 20 of Article 5221f (Vernon's Texas Civil Statutes), as amended, or the revised formaldehyde warning as promulgated by the department prior to the effective date of this Act continues to be conclusive that such person breached the duty to notify the consumer about formaldehyde; compliance with the provisions of Section 20 of Article 5221f (Vernon's Texas Civil Statutes), as amended, and the revised formaldehyde warning as promulgated by the department continues to be conclusive that such person had due regard for the health and safety of the consumer and that the home is habitable as regards formaldehyde emissions [The provisions of this section shall not be deemed to imply or infer that the retailer or manufacturer had, or did not have, prior to the passage of this Act any duty to warn any consumer concerning possible health effects of formaldehyde. Failure to comply with the notice provisions of this section or the performance standards for building products and materials which may be established by the department shall, after the effective date of this section, be evidence of wanton disregard for the health and safety of the consumer; compliance with such notice provisions and standards shall be evidence that the home is habitable and that the manufacturer and retailer had due regard for the health and safety of the consumer].

SECTION 11. The Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended by adding two new Sections 3A and 4A to read as follows:

Sec. 3A. DEFINITIONS BINDING. The definitions of manufactured housing set forth in Section 3 of this article are binding on all persons as a matter of law including local political subdivisions of this state and home rule cities.

Sec. 4A. MUNICIPALITIES. An incorporated city may prohibit the installation of a mobile home for use or occupancy as a residential dwelling within its corporate limits. Any such prohibition must be prospective and shall not apply to a mobile home previously legally permitted and used or occupied as a residential dwelling within the city. Permits for such use and occupancy must be granted by an incorporated city for the replacement of a mobile home within its corporate limits with a HUD-Code manufactured home. Upon application the installation of HUD-Code manufactured homes shall be permitted as residential dwellings in those areas determined appropriate by the city, including subdivisions, planned unit developments, single lots, and rental communities and parks. This section shall not affect the validity of any deed restriction that is otherwise valid.

SECTION 12. The effective date of this Act is September 1, 1985.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1 - C. Evans

SECTION ONE. Amend SECTION 1 of C.S.S.B. 1267 (1st. Printing) to read as follows:

SECTION 1. Article 6701-1/2, Revised Statutes, is amended to read as follows:

Art. 6701-1/2. A. Manufactured housing as defined by the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and factory-built housing or buildings as defined by the Industrialized Building Code Act (Article 5221f-1, Vernon's Texas Civil Statutes) which is in excess of legal size [width or length] limits for motor vehicles as defined by law shall not be moved over the highways, roads and streets in this state except in accordance with permits issued by the State Department of Highways and Public

Transportation. Counties and municipalities ~~[Local political subdivisions]~~ may designate to said department the routes to be used within the limits of their jurisdiction ~~[such subdivision]~~; however, no additional permit, bond, fee or license issued by a county or municipality may be required ~~[by the local political subdivision]~~. For purposes of this Article, the terms "manufactured housing" or "manufactured home" also mean and refer to factory-built housing or buildings and include temporary chassis systems and returnable undercarriages used for the transportation of the home or building; the terms also refer to a transportable section which is transported on a chassis system or returnable undercarriage and which is constructed so that it cannot, without dismantling or destruction, be transported within the legal size limits for motor vehicles.

B.(1) The application for a permit and the permit shall be in the form as prescribed by the State Department of Highways and Public Transportation; however, the ~~[application and]~~ permit must contain the overall length, width, and height of the manufactured home and the ~~[overall length and width of the]~~ towing vehicle ~~[and the manufactured home]~~ in combination. ~~[The length and width of the manufactured home shall be measured in accordance with the rules and regulations of the Texas Department of Labor & Standards relating to the titling of the manufactured home.]~~ The overall combined length of the manufactured home and the towing vehicle shall include the length of the hitch or towing device. The height shall be measured from the roadbed to the highest elevation of the manufactured home. The width of the home or section shall include any roof or eave extension or overhang on either side.

(2) The permit shall contain the route for the transportation of the manufactured home from the point of origin to the point of destination. The route shall be the shortest practical distance including divided and interstate systems, except where construction is in progress, or bridge or overpass width or height would create a safety hazard, or except highways in urban areas with heavy traffic conditions ~~[distance practical taking into account the conditions of the highways, roads, and streets and the length, width, and height of the manufactured home].~~

C.(1) The State Department of Highways and Public Transportation shall ~~[not]~~ only issue ~~[a]~~ permits to ~~[any]~~ persons ~~[which is not]~~ registered as manufacturers or retailers with the Texas Department of Labor & Standards or ~~[which is not]~~ certificated for the transportation of manufactured housing by the Railroad Commission of Texas or the Interstate Commerce Commission except as otherwise expressly authorized by this section. The registration number or the certificate number of the person to whom the permit is issued shall be affixed to the rear of the manufactured home during transportation with letters and numbers which are at least eight (8) inches in height.

(2) The State Department of Highways and Public Transportation may issue single trip permits to owners of manufactured homes provided that the ownership of the manufactured home and of the towing vehicle is shown to be the same person by the title to the home and to the towing vehicle or that a lease duly filed pursuant to Article 6701c-1 (Vernon's Texas Civil Statutes) shows the owner of the manufactured home to be the lessee of the towing vehicle. Single trip permits may also be issued to installers registered with the Department of Labor and Standards for the transportation of manufactured homes over routes between points when such transportation would be excluded from regulation under the Motor Carrier Act (Article 911b, Vernon's Texas Civil Statutes). The owner or installer must have proof of insurance coverage in force as required in Section H. of this Article.

D. ~~[There shall also accompany the application for permit a]~~ A fee of Ten Dollars (\$10) ~~[which fee]~~ for each permit shall be collected by the State Department of Highways and Public Transportation and deposited in the Treasury of the State of Texas to the credit of the State Highway Fund. ~~[Said fee shall be paid by cashiers]~~

or certified check, postal or express money order.] On application said department shall issue permit books or packets containing twenty (20) [fifty (50) or one hundred (100)] individual permits provided that the aggregate fee of Ten Dollars (\$10) per permit is received with such application. The book type permit can be used for the movement of any manufactured home regardless of width, length or height, and route approval can be secured by telephone from the issuing office along with any required validation number for the permit.

E.(1) All manufactured homes which exceed twelve (12) feet in total width shall have one rotating amber beacon of not less than eight (8) inches mounted somewhere on the roof at the rear of the manufactured home. In addition the towing vehicle shall have one rotating amber beacon of not less than eight (8) inches mounted on top of the cab. These beacons shall be operational during any permitted move over the highways, roads, and streets of this state.

(2) All manufactured homes which exceed sixteen (16), but are not more than eighteen (18), feet in total width shall have one escort flag vehicle which shall precede the home on two lane roadways and shall follow the home on roadways of four or more lanes.

(3) All manufactured homes which exceed eighteen (18) feet in total width shall be both preceded and followed by an escort flag vehicle during any movement over the highways, roads, and streets of this state.

(4) Escort flag vehicles shall have two simultaneous flashing lights or shall have one rotating amber beacon of not less than eight (8) inches on top of the vehicle, which shall be visible from both front and rear, shall have one red sixteen (16) inch square flag mounted on each of the four corners of the vehicle, and shall have a "wide load" sign mounted on the front and rear of the vehicle; the sign shall have a yellow background with black letters at least eight (8) inches in height.

(5) Two transportable sections of a multi-section manufactured home, or two single section manufactured homes, when towed together in convoy shall be considered one home for purposes of the escort flag vehicle requirements of this Article, provided the distance between the two units does not exceed 1,000 feet.

(6) The State Department of Highways and Public Transportation shall publish a map or a list updated annually of all bridges or overpasses, which due to height or width, require an escort flag vehicle to stop on-coming traffic while the manufactured home crosses the bridge or overpass.

(7) No escort flag vehicles may be required except as expressly authorized in this section [If the width or overall length of the manufactured home and the towing vehicle in combination is in excess of sixteen feet or one hundred feet, respectively, the State Department of Highways and Public Transportation shall require one or more escort vehicles as necessary for traffic safety, and the department may require proof of property damage or liability insurance in an amount sufficient to cover any damage to the highways, roads, and streets or property of the state or local subdivisions as a result of the transportation of the manufactured home].

F. A [The] permit[s] shall be good for a period of up to ten (10) days and valid only for a single continuous movement.

G. Movements authorized by the [said] permits shall be made during daylight hours only and may be made on any day except national holidays. The State Department of Highways and Public Transportation may also limit the hours for travel on certain routes because of heavy traffic conditions; the department shall publish any limitations on movements during national holidays or any limitations during certain hours of heavy traffic conditions and make such publications available to the public prior to the limitations becoming effective.

H.(1) A manufactured home shall not be towed in excess of posted speed limits or 55 miles per hour whichever is less.

(2) Brakes on the towing vehicle and the manufactured home, temporary chassis system or returnable undercarriage, shall be capable of assuring that the

maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet.

(3) Each manufactured home shall be equipped with a light-wiring harness during transportation over the roadways to provide right and left turn signal lights and braking or stopping lights and parking lights on the rear of the home.

(4) The towing vehicle shall be covered by liability insurance of not less than \$300,000 combined single limit.

1.(1) Any person who violates any provision of this Article is guilty of a Class C misdemeanor.

(2) Any person found guilty of violating the provisions of this Article may also be assessed a civil penalty of not less than \$200 nor more than \$500 for each of the following violations:

(a) failing to obtain a permit; or

(b) failing to have the required rotating amber beacons on the manufactured home or towing vehicle; or

(c) failing to provide the escort flag cars as required; or

(d) failing to have the required insurance coverage. The civil penalty may be awarded by the court having jurisdiction over Class C misdemeanors and shall be paid to the county in which the person was found guilty.

SECTION TWO. Amend SECTION 10 of C.S.S.B. 1267 (1st. Printing) by striking line 25 on page 16, and substituting therefor the following: notice; it is sufficient and adequate, as a matter of law, to advise consumers of the risks of occupying the home.

~~[it shall read as follows:~~

SECTION THREE. Amend SECTION 10 of C.S.S.B. 1267 (1st. Printing) by striking lines 25 through 27 of page 17 and lines 1 through 5 of page 18, and substituting therefor the following:

(c) [(H)] The knowing and willful failure of a retailer or a manufacturer to comply with the applicable regulations of the U.S. Department of Housing and Urban Development and of the department is conclusive that such person breached the duty to notify the consumer about formaldehyde and that the home is not habitable; compliance with such applicable regulations by a retailer or a manufacturer is conclusive that the consumer received sufficient and adequate notice of the risks of occupying the home and that the home is habitable as regards

SECTION FOUR. Amend SECTION 10 of C.S.S.B. 1267 (1st. Printing) by striking lines 14 through 23 of page 19, and substituting therefor the following:

(d) The knowing and willful failure of a retailer or a manufacturer, from September 1, 1981 to September 1, 1985, to comply with the applicable provisions of Section 20 of Article 5221f (Vernon's Texas Civil Statutes), as amended, and the revised formaldehyde warning as promulgated by the department continues to be conclusive that such person breached the duty to notify the consumer about formaldehyde and that the home is not habitable; compliance, from September 1, 1981 to September 1, 1985, with the applicable provisions of Section 20 of Article 5221f (Vernon's Texas Civil Statutes), as amended, and the revised formaldehyde warning as promulgated by the department continues to be conclusive that the consumer received sufficient and adequate notice of the risks of occupying the home and

SECTION FIVE. Amend SECTION 8 of C.S.S.B. 1267 (1st. Printing) by striking line 2 of page 15, and substituting therefor the following:

of the remedies in this Act. However, notwithstanding any provisions of law to the contrary, a lawsuit alleging failure to comply with the warranty provisions of this

article shall be abated unless and until the department has performed a consumer complaint inspection and the retailer, manufacturer, or both, have been given an opportunity to comply with the inspection report and instructions of the department. A consumer's refusal to allow the manufacturer or retailer to perform warranty service pursuant to the rules of the department is a bar to any cause of action for failure to perform warranty service.

SECTION SIX. Amend C.S.S.B. 1267 by renumbering SECTION 12 and SECTION 13 to SECTION 14 and SECTION 15, respectively, and by adding two new sections to read as follows:

SECTION 12. Chapter 8, Acts of the 68th Legislature, Second Called Session, 1983 (Article 6702-1, Vernon's Texas Civil Statutes), as amended, is amended by adding a new section to Subchapter E of Chapter 2 to read as follows:

Sec. 2.403. MANUFACTURED HOME RENTAL COMMUNITIES. (a) A "manufactured home rental community" is defined as and means a plot or tract of land which is separated into two or more spaces or lots which are rented or leased, or offered for rent or lease, to persons for the installation of manufactured homes for use and occupancy as residences; provided that the lease or rental agreement is for a term of less than sixty (60) months and contains no purchase option.

(b) A manufactured home rental community, as defined in the preceding subsection, is not a subdivision and the provisions of this subchapter are not applicable.

SECTION 13. Chapter 555, Acts of the 68th Legislature, Regular Session (Article 8861, Vernon's Texas Civil Statutes), as amended, is amended by adding a new subsection (e) to Section 6 to read as follows:

(e) This article does not apply to a person or firm that is registered as a manufacturer, retailer, or installer and regulated pursuant to the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), and that engages exclusively in air conditioning contracting for manufactured homes.

Floor Amendment No. 2 - Leonard

Amend SECTION 7 of C.S.S.B. 1267 to read as follows:

SECTION 7. Subsections (f) and (h), Section 11, Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

~~(f) All fees assessed under this article [Act] shall be paid to the State Treasurer and placed in the General Revenue Fund [except the inspection fees paid pursuant to Subsections (a) and (c) of this section. Those fees shall be placed in a special manufactured housing inspection fund created in the state treasury which shall be used by the department as may be appropriated for the costs of inspections and fee distributions to local governmental entities performing inspections pursuant to contracts or other official designations].~~

~~(h) The commissioner shall set the fees [each fee] imposed under this section in amounts [an amount] that are [is] reasonable and necessary to defray the costs of administering this article [Act].~~

Floor Amendment No. 3 - Gibson

Amend C.S.S.B. 1267 by adding five new Sections to be appropriately numbered, renumbering the remaining Sections; the five new Sections to read as follows:

SECTION \_\_\_\_\_. Subchapter C, Chapter 11, Tax Code, is amended by adding Section 11.432 to read as follows:



Sec. 11.432. HOMESTEAD EXEMPTION FOR MANUFACTURED HOME. (a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by a copy of a document of title to the manufactured home issued by the Texas Department of Labor and Standards under Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), showing that the individual applying for the exemption is the owner of the manufactured home.

(b) The chief appraiser may require an individual allowed an exemption under Section 11.13 of this code on a manufactured home in a year prior to the 1986 tax year to furnish the appraisal office before May 1 of the tax year with a copy of the document of title to the manufactured home or with other proof of ownership which accurately describes the home and contains the correct identification number showing that the individual is the owner of the manufactured home, in order to qualify for the exemption in the current tax year. However, any such requirement is not valid unless the chief appraiser has delivered to the individual prior to February 1 of the tax year a written notice that the copy of the document of title or other proof of ownership is required and which contains a description of the procedure the individual may follow to comply with the requirement. This subsection expires January 1, 1989.

(c) In this section, "manufactured home" has the meaning assigned by Section 3(s), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes); however, the term does not apply to any manufactured home which has been attached to real estate and for which the document of title has been cancelled pursuant to Subsection (j) of Section 19 of said Standards Act.

SECTION \_\_\_\_\_. Chapter 32, Tax Code, is amended by adding Section 32.015 to read as follows:

Sec. 32.015. RECORDING TAX LIEN ON MANUFACTURED HOME.

(a) The collector for a taxing unit may file notice of the unit's tax lien on a manufactured home with the Texas Department of Labor and Standards. The notice must include:

(1) the name and address of the owner of the manufactured home;  
and

(2) the amount of tax owed, the tax year for which the tax was imposed, and the name of the taxing unit that imposed the tax; and

(3) the correct identification number of the manufactured home.

(b) The collector may simultaneously file notice of tax liens of all the taxing units served by the collector. However, notice of any lien for taxes for the prior calendar year must be filed with the Department of Labor and Standards prior to May 1 of the following year. Any lien for which the notice is not filed by such date is extinguished and is not enforceable.

(c) If the information on the tax lien notice matches that of the title of record, the Department of Labor and Standards shall record a tax lien notice filed under this section and shall thereafter indicate the existence of the lien on any document of title for the manufactured home issued by the department under Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), until the collector for the taxing unit files a notice under Subsection (e) of this section canceling the notice. Simultaneously with the recording of a tax lien, the Department of Labor & Standards must mail a notice of the tax lien to any other lienholders of record.

(d) For all manufactured homes sold, or to which ownership is transferred, after December 31, 1985, the recording of a tax lien notice filed under this section constitutes constructive notice of the existence of the lien to all purchasers of the manufactured home who purchase it after the date of recordation of the lien and before the collector for the taxing unit files a notice under Subsection (e) of this section canceling the notice.

(e) If a tax lien for which notice has been filed under this section ceases to exist, the collector for the taxing unit shall file a notice with the Department of Labor and Standards stating that the lien no longer exists. The collector shall file the notice not later than the 10th day after the date of payment of the taxes subject to the lien.

(f) The provisions of this section shall not apply to a taxing unit, or any lien filed by a taxing unit, which regulates manufactured housing for siting or zoning purposes in a manner which is different from such regulation of site-built housing.

(g) In this section, "manufactured home" has the meaning assigned by Section 3(s), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes); however the term does not apply to any manufactured home which has been attached to real estate and for which the document of title has been cancelled pursuant to Subsection (j) of Section 19 of said Standards Act.

SECTION \_\_\_\_\_. Section 32.03, Tax Code, is amended to read as follows:

Sec. 32.03. **RESTRICTIONS ON PERSONAL PROPERTY TAX LIEN.** A tax lien may not be enforced against personal property transferred to a bona fide purchaser for value who does not have actual notice of the existence of the lien or, if the property is a manufactured home, who does not have constructive notice of the existence of the lien.

SECTION \_\_\_\_\_. Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended by adding Subsections (s) and (t) to read as follows:

(s) The department shall print on every document of title issued by the department under this section a notice that the document of title may not reflect the existence of a tax lien notice filed for the manufactured home since the document of title was issued, and that information about tax liens for which notice has been filed may be obtained from the department on written request.

(t) On the written request of a person containing the name of the owner of a manufactured home having a document of title or the identification number of a manufactured home, the department shall furnish information held by the department on the current ownership of the manufactured home and the existence of any tax liens on the manufactured home for which notice has been filed with the department.

SECTION \_\_\_\_\_. Title 79, Revised Statutes, is amended by repealing Section (7) of Article 5069-6A.08 and amending Article 5069-6A.12 as follows:  
Art. 5069-6A.12. Tax and Insurance Escrow.

(1) The creditor may require [if the creditor and consumer agree,] the consumer [may elect] to pay ad valorem taxes on the manufactured home through the creditor and include these taxes as reasonably estimated for the first year in the credit transaction or pay the tax estimate for the first year to the creditor and, on the date each installment is due, pay a sum equal to one-twelfth of the annual ad valorem taxes as reasonably estimated. The creditor may require premiums for insurance, required in accordance with Article 5069-6A.08(1), for coverage in the second and subsequent years to be paid by the consumer to the creditor by paying, on the date each installment is due, a sum equal to one-twelfth of the yearly premium for the insurance as reasonably estimated.

(2) the creditor shall deposit and hold the tax and insurance installments paid to the creditor in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency. The creditor shall apply those funds to pay the ad valorem taxes and the insurance on the manufactured home. The creditor may not charge for holding and applying the funds, analyzing the account, or verifying and compiling the bills. The creditor is not required to pay the consumer any interest or earnings on those funds. The creditor shall give to the consumer, without charge, an annual accounting of the funds showing credits and debits to the funds and the purpose for which each debit to the funds was made.

(3) If the sum of the tax installments held by the creditor and the future tax installments of funds payable before the due dates of taxes on the manufactured home exceeds the amount required to pay the taxes as they come due, the creditor, at the consumer's option, shall either repay the excess to the consumer or credit the excess to the payment of the consumer's future tax installments. If the amount of the tax installments held by the creditor is not sufficient to pay taxes as they come due, the consumer shall pay to the creditor before the 31st day after the day on which the creditor mails to the consumer notice requesting the consumer to pay the amount of the deficiency an amount equal to the amount of the deficiency. If the consumer fails to make such an adjustment with regard to the tax installments, the creditor may treat the deficiency in the same manner as forced placed insurance pursuant to Article 5069-6A.08(3) [~~Subsection (3) of Section 8 of this chapter~~].

(4) If the sum of the insurance premium installments held by the creditor and the future insurance premium installments of funds payable before the due dates of insurance premiums exceeds the amount required to pay the insurance premiums as they come due, the creditor, at the consumer's option, shall either repay the excess to the consumer or credit the excess to the payment of the consumer's future insurance premium installments. If the amount of the insurance premium installments held by the creditor is not sufficient to pay insurance premiums as they come due, the consumer shall pay to the creditor before the 31st day after the day on which the creditor mails to the consumer notice requesting the consumer to pay the amount of the deficiency an amount equal to the amount of the deficiency. If the consumer fails to make such an adjustment with regard to insurance required under Article 5069-6A.08(1), the creditor may treat the deficiency in the same manner as forced placed insurance described by Article 5069-6A.08(3) [If the consumer agrees to enter into a tax escrow agreement, the creditor may require the consumer to use that method of payment for the full term of the debt. However, the creditor may not in any way require the consumer initially to enter into an escrow agreement].

The amendments were read.

Senator Brooks moved to concur in the House amendments.

The motion prevailed.

#### SENATE RULE 103 SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Criminal Justice might consider S.B. 1467 today.

#### SENATE RULE 103 SUSPENDED

On motion of Senator Traeger and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Intergovernmental Relations might consider S.B. 1487 today.

#### BILLS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills:

S.B. 5

S.B. 128

S.B. 140 Signed subject to Art. III,  
Sec. 49a of the Constitution)

S.B. 366

S.B. 477

**S.B. 598****S.B. 616****S.B. 905****S.B. 1005****NOTICE OF SESSION TO HOLD  
LOCAL AND UNCONTESTED BILLS CALENDER**

Senator Blake announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held upon recess on Friday, May 17, 1985, and that all bills and resolutions would be considered on second and/or third reading in the order in which they are listed.

**WELCOME AND CONGRATULATORY RESOLUTIONS**

**S.C.R. 170** - By Krier, Barrientos: Extending congratulations to Robert Rodriguez.

**S.R. 442** - By Farabee: Extending congratulations to Wayman W. Chilcutt.

**S.R. 443** - By Truan: Extending congratulations to Community of Bishop on its 75th anniversary.

**S.R. 444** - By Caperton: Extending welcome to Dr. Ronald W. Huddleston of Hearne, Capitol Physician for the Day.

**ADJOURNMENT**

On motion of Senator Mauzy, the Senate at 12:55 o'clock p.m. adjourned until 9:00 o'clock a.m. tomorrow.

**SEVENTY-SECOND DAY****(Friday, May 17, 1985)**

The Senate met at 9:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

A quorum was announced present.

Senator Bob McFarland offered the invocation as follows:

We thank You for another day to be of service to You. In that service keep us mindful that for the gift of eternal life we need be only true servants to Your word.

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.